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# The Treaty of Lisbon and Civil Protection in the European Union

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## Foreword

The EU treaties are crucial milestones in the historical development of the Union. The first milestone was the European Coal and Steel Community in 1951. Now, the latest milestone is the Treaty of Lisbon, which will come into force in December 2009. This report describes and analyses how the EU's crisis preparedness within the area of civil protection could conceivably be formulated and carried out once the Treaty of Lisbon has come into force and what the most important changes will be in relation to the current situation.

The main author of the report is Teresa Åhman, while Per Larsson has been the project leader for the report. The report has been written at the request of the Swedish Ministry of Defence's Department for Crisis Preparedness (SSK). Olle Jonsson at SSK and Sara Siri at Sweden's Permanent Representation to the EU in Brussels initiated the report. A Swedish version of the report was published in June 2008 that forms the basis for this report. However, a few updates have been made. In this context, we would like to take this opportunity to thank the people interviewed for the report and who, in so doing, generously gave their time and shared their knowledge and also their experience of crisis preparedness in the EU and European cooperation in general. We would also like to thank our colleagues Claes Nilsson, Sanna Zandén Kjellén and Eva Hagström Frisell for their valuable comments and suggestions for improving the report.

The study has been carried out within the framework of the Swedish Defence Research Agency's *CIVINT* project, which analyses civilian, international crisis preparedness and crisis management issues and provides direct support to the Swedish Ministry of Defence. Our project colleagues in *CIVINT* are part of the Research Group for Euro-Atlantic Security at the Swedish Defence Research Agency. The Research Group, which works on different projects at the request of, among others, ministries and authorities, strives to increase knowledge of civilian and military crisis preparedness and crisis management issues in a European and Euro-Atlantic context.

Carolina Sandö

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## Sammanfattning

Lissabonfördraget medför en rad förändringar som syftar till att demokratisera, legitimera samt effektivisera arbetet i EU. I denna studie belyses vilka möjligheter och utmaningar Lissabonfördraget medför EU:s samarbete på området civilskydd (Civil Protection).

Civilskydd fördragsfäst genom Lissabonfördraget för första gången som ett formellt politikområde inom EU samt blir ett område för delad kompetens mellan EU och medlemsstaterna. I Lissabonfördraget introduceras även en särskild solidaritetsklausul, som ur det korta perspektivet inte antas påverka civilskyddsområdet. På sikt ges dock incitament för att fördjupa samarbetet på området. Lissabonfördraget medför vidare att det kommer att vara viktigt för EU:s medlemsstater att agera proaktivt i EU:s policyprocess och bygga allianser för att kunna driva sina intressen på området. Lissabonfördraget innebär att eventuell ny lagstiftning på civilskyddsområdet kommer att tas enligt medbeslutandeprocessen där både rådet och Europaparlamentet måste godkänna ett förslag för att det ska kunna antas. Dessutom ska rådet fatta beslut med kvalificerad majoritet vid antagande av ny lagstiftning på civilskyddsområdet, tidigare gällde konsensus. Goda relationer med Europaparlamentet kommer därmed också att vara viktigt. Lissabonfördraget introducerar även en ny kommitté för inre säkerhet inom rådet. Berörande på kommitténs funktion och sammansättning kan området civilskydd komma att beröras.

Nyckelord: Lissabonfördraget, civilskydd (Civil Protection), solidaritetsklausulen, kommittén för inre säkerhet, krisberedskap, EU

## Summary

The Treaty of Lisbon aims at rendering the EU more democratic, legitimate and more efficient. This study highlights the opportunities and the challenges brought about by the Treaty of Lisbon for the area of Civil Protection within the EU.

The area of Civil Protection is for the first time formalized as a specific policy-area in the EU through the Treaty of Lisbon. A solidarity clause is introduced as well. From a short-term perspective no specific consequences for the area are expected. However, from a long-term perspective incentives are given to further deepen the cooperation within the area. Moreover, the Treaty of Lisbon will make it important for Member States to act pre-emptively in the policy-process of the EU and to build alliances in order to pursue national interests within Civil Protection. The adoption of new legislation in the area will according the Treaty of Lisbon be adopted through the co-decisional procedure between the Council and the European Parliament and through qualified majority voting in the Council. Good relations and cooperation with the European Parliament will therefore also be imperative. Finally, a new Standing Committee on Internal Security within the Council is introduced. Depending on its exact function and composition, Civil Protection may be affected.

**Keywords:** Lisbon Treaty, Civil Protection, Solidarity Clause, Standing Committee on Internal Security, Crisis Preparedness, EU

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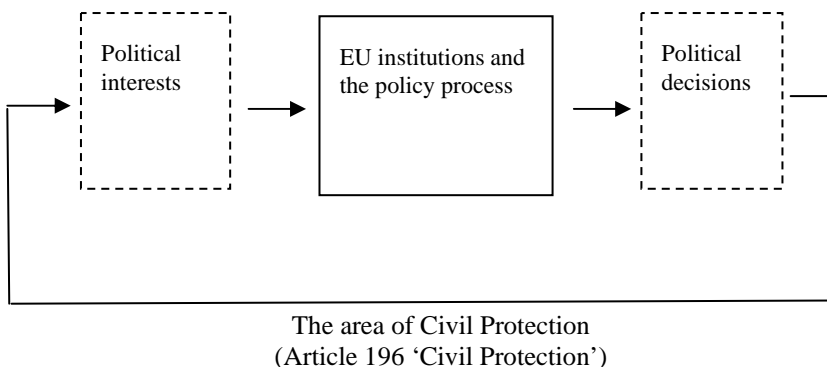
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## The Report in Brief

The aim of this report has been to analyse the consequences of the Treaty of Lisbon for the area of Civil Protection within the EU. The study has strived to highlight the most important changes in relation to the present situation, as well as to illustrate and to analyze how the area of Civil Protection will develop and materialize subsequent to the implementation of the Treaty of Lisbon. The report specifically addresses civil servants working with questions concerning the EU and Civil Protection, both in Brussels and in the Member States. It is emphasized that the conclusions of the study have been developed when the Treaty of Lisbon not has entered into force and no praxis has been established for its implementation yet. Additionally the articles of the Treaty are vaguely formulated and will be further negotiated when all Member States have ratified it.

EU as a political system consisting of three different components: 1) political interests, 2) political institutions and the policy process, 3) political decisions are the point of departure for the report.



Three areas in the Treaty of Lisbon have been addressed specifically as they are understood to be important in relation to the area of Civil Protection, namely: article 196 'Civil Protection', article 222 the 'Solidarity Clause' and article 71 a 'Standing Committee on Internal Security'.

According to the Treaty of Lisbon, Civil Protection is an area of shared competence between the EU and the Member States. Therefore, the competence of the EU within this area is limited to measures aimed at *supporting, coordinating or complementing* those measures which are carried out by the Member States. Through article 196 of the Treaty of Lisbon, Civil Protection is for the first time established as a specific policy area in the EU.

Civil Protection is more or less linked to other areas in the EU such as the area of freedom security and justice, an area that has evolved within the framework of the Tampere-programme, the following Hague-programme and will most certainly continue to develop in the Stockholm-programme. Public health, environ-

ment, consular protection and humanitarian aid are other examples of areas having linkages to the area of Civil Protection. From a short-term perspective no specific consequences are expected for these relations. Nevertheless, from a long-term perspective the Treaty of Lisbon makes possible initiatives aimed at a general coordination of Civil Protection and other policy areas within the EU. The further establishment of the Union's area of freedom, security and justice through the Stockholm-programme, the new Standing Committee on internal security, the new Chapter 1 'General Provisions on the Union's External Action' in the Treaty of Lisbon offer a possibility to undertake a more comprehensive approach regarding all areas related to the Union's internal as well as its external security. Of course, this will be dependent on the presence of a political momentum to pursue such an approach.

Through the Treaty of Lisbon a solidarity clause is introduced which is based on the existing solidarity declaration. According to the wordings of the solidarity clause, the Member States are requested to act in a spirit of solidarity if another Member State is subject to a terrorist attack, a natural disaster or a manmade disaster. Hence, the solidarity clause embraces nearly all work within the EU related to crisis management, including Civil Protection. Besides its symbolic value, the solidarity clause will not bring about anything new for the cooperation in the area of Civil Protection, or for the existing crisis management structures within the EU from a short-term perspective. Nevertheless, if a political will-power appears within the EU, the solidarity clause may from a long-term perspective have effects for Civil Protection by offering incentives to further develop and deepen the cooperation. Moreover, the solidarity clause may possibly render it more difficult to demand payment of another Member State for equipment or for civil protection interventions having been mediated through the Community Mechanism for Civil Protection.

## **Political Interests**

The Treaty of Lisbon offers improved possibilities for different political actors to influence and shape the area of Civil Protection, not least *the Commission, the European Parliament, the national parliaments, and the citizens of the EU* (although the latter hardly will have practical implications).

## **The EU Institutions and the Policy Process**

The Treaty of Lisbon brings about several important changes regarding the organisational structure of the EU institutions, the division of power between the institutions and the policy process, which all have effects on the area of Civil Protection.

First, the 'ordinary legislative procedure' will be applied for the area of Civil Protection according to the Treaty of Lisbon. Qualified majority voting will replace consensus in the Council. Consequently, the influence of each Member

State is undermined since they alone can not block a proposal. This in turn implies that it will become even more important for the Member States to form coalitions with other Member States and to influence the possible legislative act in a preferable direction already early in the policy process. The new procedures for decision making entail a shift in the balance of power between the Council and the Commission as it may possibly be assumed that the Commission more easily will be able to carry through potential legislative proposals within Civil Protection.

Second, the Council will share both legislative and budgetary power with the European Parliament in accordance to the co-decisional procedure. In other words, the European Parliament obtains equal legislative power as the Council and is also given the right to modify the Commission's possible legislative proposals within Civil Protection. From this perspective the Treaty of Lisbon brings about an important shift in the balance of power between the Council and the European Parliament within the area. What this actual shift will imply remains yet to be seen. From a long-term perspective, a potential scenario is that Civil Protection becomes a political priority for the different party groups of the European Parliament which could imply that the obtained power may be drawn upon in order to further strengthen and deepen the cooperation within Civil Protection.

A third important result of the Treaty of Lisbon is the strengthened role of the national parliaments in the policy process, which are given the responsibility of ensuring compliance with the principles of subsidiarity and proportionality. The Treaty of Lisbon establishes that the Commission shall submit the legislative proposals to the national parliaments and that it must as well be able to motivate the proposals in relation to the principles of subsidiarity and proportionality. Each national parliament is provided with two votes and if one third of the parliaments oppose the legislative proposal, the Commission must reconsider it. A higher degree of involvement by the European Parliament and the national parliaments may possibly pave way for extensive negotiations which may bring about delays in the policy process, not least in the decision phase. However, this shall be seen in relation to the introduction of qualified majority voting in the Council, which was established with the stated aim to facilitate decision making within the EU.

A fourth modification, which however is expected to have minor practical implications for Civil Protection, is the introduction of the 'citizens' initiative'. The citizens of the EU are hereby given the opportunity to promote their political interests. By gathering a million signatures from a significant number of Member States, the citizens of the EU may request the Commission to present a specific draft proposal for example within Civil Protection. Future events will most certainly determine if the citizens' initiative will have an actual practical impact or if it will be a mere democratic symbol.

A fifth change that is deemed to be of importance for the area of Civil Protection is the introduction of a new Standing Committee on Internal Security (COSI) within the Council. COSI's expected function, composition and competence is far from established, the wording thereof in the Treaty of Lisbon is vague and will not be developed until the Treaty of Lisbon has been ratified by all Member States. What possible consequences the new committee may bring about for Civil Protection is therefore yet highly uncertain. Different possible future scenarios are elaborated in this report.

Nevertheless, there are important linkages between the area of Civil Protection and the rest of the EU's work on internal security. It is therefore not unlikely that COSI may acquire the responsibility of questions that are dealt with in the Council working-committee PROCIV.

Moreover, the responsibility of developing the EU Crisis Coordination Arrangements (CCA) may possibly fall within the competence of COSI. If the committee is provided with operational tasks, meaning having a role in the event of a crisis, questions are raised concerning how COSI shall relate to the Crisis Steering Group of the CCA. Since the main questions for COSI, according to the few discussion held so far, most likely will be those related to the rather extensive police- and judicial cooperation, Civil Protection risk to be set aside in favour of these issues of "higher priority". However, it seems unlikely that PROCIV that holds an important knowledge and experience in the area will easily give away the responsibility for Civil Protection to COSI.

Finally, there are today several crisis management structures within the Commission (the cross-cutting and early warning system ARGUS, the Monitoring Information Centre etc.) and within the Council (for example CCA) which are not established in the treaties. The Treaty of Lisbon is however not expected to have consequences for these structures. A potential exception, however, is the CCA depending on the development of COSI.

## **Political Decisions within Civil Protection**

The establishment of Civil Protection as an area of shared competence together with the formalization of the solidarity clause may raise the incentives for the Commission and some Member States to seek a development and a deepening of the cooperation. From the Commission's perspective it may be deemed that a formal and more lucid ground has been obtained from where to proceed with its ambitions within Civil Protection. The Commission has proved in favour of developing the area. Hence, from a long-term perspective the Treaty of Lisbon may lead to an increased number of initiatives in the area of Civil Protection.

# 1 The Treaty of Lisbon and the Area of Civil Protection

## 1.1 Introduction

The Treaty of Lisbon will enter into force when, and if, it is ratified by the Union's 27 Member States. The intention is that the Treaty of Lisbon will promote the EU's ability to work more effectively and, at the same time, make the Union, in terms of the Treaty, more modern, more democratic and clearer for its citizens. The Treaty of Lisbon constitutes a reform of the Constitutional Treaty which was negotiated at the beginning of the 21st Century and signed by all Member States in 2004, but was later stopped during the ratification process. The Treaty of Lisbon raises the question of what the EU's future work on crisis management will look like and how this will differ from work today.

## 1.2 Aim

The aim of this report is to analyse and describe what the cooperation in the area of 'Civil Protection' will look like in the future if the Treaty of Lisbon is ratified and what this will entail for the Member States' national crisis preparedness. In analytical terms, the following questions guide the report:

How will the EU's cooperation in the area of Civil Protection be shaped and carried out once the Treaty of Lisbon has entered into force and what will the most important changes be for the Union and its Member States in relation to the present situation?

## 1.3 Target Group and Reading Instructions

This report is primarily aimed at civil servants working with questions concerning the EU and Civil Protection, both in Brussels and in the Member States, but also at all those others who are interested in the development of European cooperation in crisis management. The changes brought about by and consequences of the Treaty of Lisbon will be presented in the report against the background of explanatory descriptions of EU cooperation and the area of civil protection. This is so that the report will be more easily understood by those who are not familiar with the sometimes complicated EU cooperation and the area of Civil Protection. It is, therefore, inevitable that those more familiar with some parts might see the report as 'over-explicit'. 'Fact boxes' appear regularly in the report and these can be used by those who want to get a quick idea of the findings of the different sections of the report. It should be strongly emphasised that the EU had not begun to

function in accordance with the Treaty of Lisbon when this report was written in the spring of 2009. Many of the Articles from the Treaty that are illustrated in the report will not be subject to negotiation regarding how they should be interpreted and executed in greater detail until such time as the Treaty is ratified. In other words, no practice has been developed regarding how the Union will function on the basis of the Treaty of Lisbon at the time of writing this report. The conclusions of the report are, therefore, to be regarded as tentative.

It shall also be stressed the Swedish version of the report was written and made available in Sweden in 2008. The interviews carried out for that report has been re-utilized within this report.

The report is set out as follows. The scope of the report will first be presented in the remainder of this chapter. Then, the report's approach to the EU will be clarified, on the basis of which the analysis has been carried out and conclusions have been drawn regarding the Treaty of Lisbon's changes and consequences. Finally, the sources for the report will be mentioned. In Chapter 2, 'Civil Protection in the European Union', the area of Civil Protection is described based on the Treaty of Lisbon's frameworks and structures for the area. In Chapter 3, the 'The Solidarity Clause of the Treaty of Lisbon and Civil Protection', the solidarity clause is highlighted and its potential consequences for the area of Civil Protection elaborated. In Chapter 4, 'To Develop Policy in the Area of Civil Protection', an illustration is made on how policy in the area of Civil Protection is intended to be developed in accordance with the Treaty of Lisbon. In Chapter 5, 'The Institutional Framework', the author briefly illustrates how the EU's institutions and their reciprocal power relationships are affected by the Treaty of Lisbon and what consequences this may have for the Area of Civil Protection. In Chapter 6, 'The Standing Committee on Internal Security', the author highlights possible tasks and roles for the new committee and what consequences they may bring about for Civil Protection.

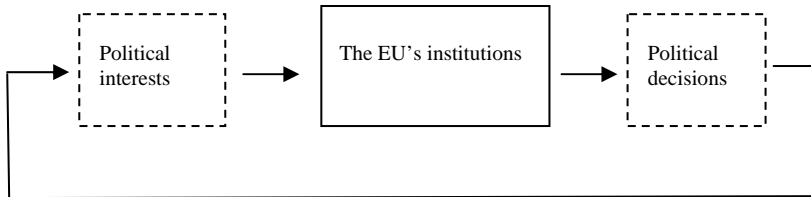
## **1.4 Scope of the Report**

The EU carries out work on crisis preparedness within a number of different policy areas and sectors, e.g. the areas of agriculture, finance and assistance. This report is, however, restricted to illustrating the activity and regulations that specifically concern the area of Civil Protection.

## **1.5 The EU – A Political Bargaining System**

The EU is a phenomenon that is very difficult to grasp and penetrate. As a phenomenon, the EU can also be regarded and interpreted on the basis of different scientific and theoretical perspectives. That is why it is important to clarify on the basis of which perspective the description and analysis of the Treaty of Lis-

bon and the EU's future civil protection are made in the report. In the report, the EU is regarded and interpreted as a political system that is roughly divided into three different parts: (1) political actors, (2) political institutions, (3) political decisions



*Figure 1: The EU as a political system*

### 1.5.1 Political Actors

The political actors attempt to realize their interests through the political system and include, among others, member state governments, companies, trade unions, etc. In order to realize their interests, they express their views and interests in different contexts with the aim to influence the nature of decisions made within the EU.

### 1.5.2 EU Institutions and the Policy Process

The political institutions are responsible for collective decision-making in the EU. These institutions have the EU's executive, legislative and judicial powers. It is through these institutions that the political actors' interests are turned into policy, e.g. within the area of Civil Protection. The political institutions in the EU are, by formal definition, made up of the European Commission, the Council (formally the Council of the European), the European Parliament, the Court of Justice and the Court of Auditors. The form of the institutions and their bodies often governs which political actors have their say in the EU's political process, and when. The balance of power between the institutions affects the degree of influence of the political actors whose interests they represent and convey.

Through the treaties the Member States have entered into, and now most recently, the current Treaty of Lisbon, they have collectively decided how the institutions should be established, which basic functions they should have and how they should relate to each other in the EU's political process. This also means that the nature of the political decisions may alter if the form and positions of power of the institutions change. The aim of this report is precisely to attempt to analyse and describe how such changes brought about by the Treaty of Lisbon can conceivably influence the EU's future work on crisis preparedness issues with focus on. The political institutions constitute the formal frameworks for the EU's collective decision-making. But, within these formal frameworks, informal

networks, coalitions between various political actors and bargaining work like a lubricant for the political process.

### **1.5.3 Political Decisions**

Through the formal political institutions and the informal interplay between the political actors, a number of political decisions in the form of different regulations and legislation or coordination proposals, e.g. within the area of crisis preparedness, are produced. These all have more or less noticeable consequences within the Member States and the relationships between them or with third parties. The effects of the political decisions are then fed back to the various political actors' interests.

## **1.6 Method and Sources**

The wording of the Treaty of Lisbon has been analysed, with the focus on the context of the area of Civil Protection and the actors, structures and processes involved in the area on the basis of the view of the EU as a political bargaining system that just has been described. The sources for the analysis and conclusions of the report consist, firstly, of written material in the form of general literature about the EU, treaty texts of the Constitutional Treaty and the Treaty of Lisbon, different types of analysis of the Constitutional Treaty and the Treaty of Lisbon and different forms of EU documentation.

Second, the sources comprise of interviews. The persons interviewed consist of officials and experts in Sweden at: the Ministry of Defence; the Ministry of Justice; the Prime Minister's Office and at; the Swedish agencies working closely with civil protection issues. Moreover, interviews have been carried out with academic researchers in Sweden who are experts within the field and national representatives to the EU from Germany and Greece working closely with civil protection matters. Interview material with representatives in PROCIV and national representatives from France, the Czech Republic and Slovenia for an earlier report has also been used as sources. The aim has been to reflect the different point of views of the Member States as regards the area of Civil Protection and its further development in order to get an overview of different possible effects of the Treaty of Lisbon on Civil Protection.

As a majority of the persons interviewed wanted to remain anonymous, references will not be made to the different interviews in the text. However, when lines of arguments in the report are built upon the interviews, this will be indicated, although without specifying exactly 'who said what'. Experts at the Swedish Ministry for Foreign Affairs and the EU Commission were asked for interviews, but declined. The names of the people interviewed are not given in the interview list as we promised they would remain anonymous. The exception is the academic researchers.

## 2 Civil Protection in the European Union

### 2.1 Civil Protection

The cooperation within civil protection has emerged the last decade out of different natural catastrophes and disasters that have struck Europe. As catastrophes more often have proved to be transnational, the need to cooperate at a European level has become evident.

In brief, the cooperation within civil protection could be traced to the end of the 1970s in relation to the managing of marine pollution. Civil protection was formally established as an area of cooperation in the EU (at this time the European Community) at a ministerial meeting in Rome in 1985. At this meeting the Member States agreed to coordinate their national rescue services in the event of a natural disaster within the Union. During the 21st century, the scope of the European cooperation in the area has deepened and broadened considerably and civil protection has today become an important element of the Union's overall security policy. At present, the cooperation in the area is based on two legal acts: the Council Decision establishing a Community Civil Protection Mechanism from 2001 (a revised version was adopted in autumn 2007) and Council Decision establishing and Council Decision establishing a Civil Protection Financial Instrument adopted in 2007.<sup>1</sup>

In February 2009 the Commission presented a communication on a community approach for the *prevention* of natural and manmade disaster within the EU. The aim was to identify different measures, which could be included in a "Community strategy/ framework" for prevention within civil protection. Prevention is mainly a national responsibility but the Community strategy would serve as a complement to the national efforts regarding prevention. At the end of the year 2009 the work on developing a community approach to prevention has come far.

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<sup>1</sup> Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (2007/779/EC, Euratom). Council Decision of 5 March establishing a Civil Protection Financial Instrument (2007/162/EC, Euratom)

Thus, prevention is likely to become an important aspect of the cooperation within civil protection ahead.<sup>2</sup>

The initial cooperation between the Member States has developed from mainly including consequence management in relation to natural disasters to now 'better protect people, their environment, property and cultural heritage in the event of major natural or man-made disasters occurring both inside and outside the EU'. The goal to better respond to natural disasters has hereby expanded to become the extensive goal of protecting civilians from both natural disasters and man-made disasters.

## 2.2 The Treaty of Lisbon and the Area of Civil Protection

The Treaty of Lisbon establishes the area of Civil Protection as a formal policy area in the EU.

Up until the implementation of the Treaty of Lisbon, Civil Protection has not been an area legally strengthened in the EU treaties. Instead the initiatives taken by the Commission have been based on the so-called 'Flexibility Clause' – Article 308 in the Treaty of the European Community. This article is applied when a measure is seen as 'necessary' in order to achieve the goals of the EU as stipulated in the treaties.<sup>3</sup>

The Treaty of Lisbon provides the area of Civil Protection with a specific article – Article 196 'Civil Protection', and formally establishes Civil Protection as an area of 'shared competence' between the Union and the Member States.<sup>4</sup> Shared competence means that the EU is given the competence to carry out actions to *support, coordinate and complement* actions undertaken by the Member States. However, the measures carried out by the EU shall *not* replace those of the

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<sup>2</sup> Commission Communication 'A Community approach on the prevention of natural and man-made disasters', Brussels, 23.2.2009 COM (2009) 82 final

<sup>3</sup> The use of the article has been rather arbitrary since there are no specific limits of what goals that shall be obtained and therefore what measures that need to be taken to that end. Provisions for the use of this article have therefore been established in the Treaty of Lisbon containing i.e. that the Commission shall notify the national parliaments whenever the article shall be applied. Furthermore it is stipulated that the article shall not entail a harmonization of national legislation. Hettne, Jörgen och Fredrik Langdal *Vad innebär reformfördraget? (What does the Reform Treaty entail?)*. Author's translations. Swedish Institute for European Policy Studies (SIEPS) 2007, p 3.

<sup>4</sup> Article 196 in the Consolidated version of the Treaty on the Functioning of the European Union.

Member States, nor shall EU legislation comprise the harmonization of national legislation.<sup>5</sup>

Article 196 on Civil Protection stipulates that supportive, coordinating or complementary measures carried out by the Union shall be made with a view to increasing the efficiency of the systems for crisis prevention, preparedness and response to natural and man-made disasters. These measures shall aim to:

Support, coordinate and complement those measures taken at a national, regional or local level concerning the prevention of risks, the preparedness of the Member States' actors within the area of Civil Protection as well as the response to natural and other disasters within the EU.

Enable rapid and efficient operational cooperation between civil protection capacities of the Member States.

Ensure coordination between international actions as regards civil protection.

Prior to the Treaty of Lisbon, decisions to undertake different measures within the area of Civil Protection were taken by *consensus* in the Council on a proposal from the Commission and an opinion from the European Parliament. Each Member State had the opportunity to block a decision.

However, the opportunity for each Member State to veto a decision will disappear as a result of the Treaty of Lisbon. The establishment of measures necessary to achieve the objectives referred to above will from now on be taken in accordance with the ordinary legislative procedure,<sup>6</sup> which involves a strengthened legislative role for the European Parliament and a qualified majority as the ordinary voting procedure in the Council.<sup>7</sup>

Questions have been raised concerning whether Article 196 only entails a legal basis for the Commission to promote initiatives as regards 'civil protection activities' *within* the EU, or if civil protection activities *outside* the EU shall be included as well. '*To assure coordination between international actions as regards civil protection*' is a formulation referring to the external dimension of civil protection, but what exactly such measures may consist of is uncertain at this stage.<sup>8</sup>

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<sup>5</sup> Article 6 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>6</sup> Article 196 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>7</sup> The ordinary legislative procedure and its implications for the area of Civil Protection will be further discussed in chapter 4.

<sup>8</sup> Article 196 in the Consolidated version of the Treaty on the Functioning of the European Union.

## 2.3 Rules, Norms and Principles for Civil Protection

As illustrated above, the Treaty of Lisbon establishes new ‘rules of the game’ for the area of civil protection. In addition, there are also other more or less formalized norms and principles, which have guided the cooperation in the area since its establishment in the mid-1980s. These norms and principles will most likely, to different degrees, continue to indicate the forms and the nature of the cooperation and therefore they will be described below. It shall be noted that compliance with these norms and principles may vary over time between the Member States as well as between the Member States and the EU.

The first principle is the *principle of subsidiarity* which is important within the area of Civil Protection. It stipulates that a crisis or a disaster shall be managed at the lowest possible level, i.e. at the national or the local level. The EU level shall be seen as a last resort. In strict terms the principle of subsidiarity means that the EU level is linked to emergency prevention, preparedness or response when the measures brought about at the national level are not sufficient. The principle limits the role of the Union to that of a conveyor of capacities and information between the Member States. The importance of the principle of subsidiarity in the EU in general is, *inter alia*, underlined through a new provision in the Treaty of Lisbon which paves the way for a greater possibility of the national parliaments exerting influence on the EU policy process.<sup>9</sup>

Closely interlinked to the principle of subsidiarity is the second *principle to not duplicate capacities and structures that already exist*. In other words, capacities that already are present at the national level and at the local level shall not be established at the EU level as well.<sup>10</sup>

The third principle is referred to as the *principle of collective responsibility* which entails that the Member States collectively are responsible for the prevention of and the preparedness for a crisis in the EU. To that end the Member States have the responsibility to carry out preventive and preparatory measures at the national level. Moreover, when measures are taken at the national level considerations must be taken of the fact that a lack of national crisis prevention and

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<sup>9</sup> The principle of subsidiarity is central in the entire EU-cooperation. The principle of subsidiarity can *inter alia* already be traced to the Treaty of Rome signed on 25 March, 1957.

<sup>10</sup> Kaiser, Magnus och Helén Jarlsvik, *En modell för strategisk omvärldsanalys (A model for strategic environmental scanning)*. The authors translation, 2006, p 44.

preparedness may cause damage to the EU as a whole since crises today tend to be transnational.<sup>11</sup>

The fourth principle is the *principle of solidarity* which can be described as the very essence of the cooperation within the EU. The principle of solidarity means that the Member States shall support each other in the event of a major crisis or emergency by, *inter alia*, sharing costs and capacities as well as facilitating organisation and coordination regarding available assets and political response. The Civil Protection Mechanism and the Crisis Coordination Arrangement are two concrete examples of this principle. The importance of solidarity in the EU has increased over the years, not least as a consequence of the many terrorist attacks and the natural disasters that have struck Europe. This has especially paved the way for the introduction of a solidarity clause in the Treaty of Lisbon, which will be further described next.<sup>12</sup>

## 2.4 Connections between Civil Protection and other Areas in the EU

The area of Civil Protection is, to different degrees, interlinked to other areas of cooperation in the EU. For example public health set within the Directorate-General for Health and Consumer Protection (DG SANCO)<sup>13</sup>, if pandemics may be a possible consequence of a major catastrophe, and the environment as Civil Protection assistance missions most often are carried out in relation to natural disasters. It is noteworthy that the 'New flu' (H1N1) has triggered a discussion about the added value of the Civil Protection Mechanism in relation to the outbreak of a pandemic. The responsibility for Civil Protection is set within the Directorate-General for the Environment (DG ENV). Civil Protection also constitutes one important part of the EU's work on counter-terrorism, not least in relation to consequence management. Moreover, the area has got interlinkages with the cooperation in the EU on consular protection. In relation to the terrorist attacks in Mumbai, India, in 2008, it is noteworthy that the EU-Presidency (France at the time) in fact activated the Mechanism in order to request assistance for the

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<sup>11</sup> Larsson, Per, *Från hemvärd till invärd krisberedskap – Möjligheter och utmaningar vid en europeiserad svensk krisberedskap (The 'Europeanization' of Swedish Crisis Preparedness - Possibilities and challenges)*. The author's translation. 2007, p 32.

<sup>12</sup> The solidarity clause will be further elaborate in the next chapter.

<sup>13</sup> See for example European Commission Homepage:  
[http://ec.europa.eu/dgs/health\\_consumer/index\\_en.htm](http://ec.europa.eu/dgs/health_consumer/index_en.htm)

medical evacuation of injured EU-citizens from the country. As a rule, the Mechanism is activated when a request is made by the country having been struck by the crisis, in this case India. Thus, this was the first time the Mechanism was activated in order to offer consular protection to EU citizens. Similar situations are likely to occur ahead.

From a *short-term perspective*, the Treaty of Lisbon will not entail any direct consequences for the area of Civil Protection and its present connections with the other areas, a conclusion which is supported by the interviews carried out for this report.

Nevertheless, from a *long-term perspective* the firmer establishment of the Union as an area of freedom, security and justice will most likely make the dividing line between Civil Protection and the other policy areas vaguer. As a consequence of the Treaty of Lisbon, the area as whole will be subject to qualified majority voting in the Council, a new standing committee on internal security will be established<sup>14</sup> and a new chapter 'General Provisions on the Union's External Actions' is introduced. Moreover, the so called 'Stockholm Programme' will be adopted. Upcoming crises will most certainly trigger a further merge between Civil Protection and other areas.

On June 10, 2009, the Commission assumed a Communication on 'An area of freedom, security and justice serving the citizen'. The communication will serve as a basis for the further discussions about a new multi-annual programme – the Stockholm Programme – for the areas that fall under the responsibility of the Justice and Home Affairs Council (JHA). Previous programmes shaping the area has been the Tampere Programme and the Hague Programme.<sup>15</sup> 'A Europe that protects' constitutes one important corner-stone in the overall work on establishing the EU as an area of freedom, security and justice. In the programme it is also suggested that the area of Civil Protection should be strengthened and that an 'internal security strategy' should be developed.<sup>16</sup>

The 'General Provisions on the Union's External Actions' includes two new articles, which stipulate that the Union shall define and pursue common policies and

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<sup>14</sup> Article 71 in the Consolidated version of the Treaty on the functioning of the European Union.

<sup>15</sup> Tampere European Council, Presidency Conclusions, 15 and 16 October 1999; Hague Programme: strengthening freedom, security and justice in the European Union (16054/04), Brussels, 13 December 2004.

<sup>16</sup> Commission Communication 'An area of freedom, security and justice serving the citizen'. Brussels, 10.6.2009 COM (2009) 262 final.

actions and work for a high degree of cooperation in all fields of international relations in order to:

(c) preserve peace, prevent conflicts and strengthen international security;<sup>17</sup>

(g) assist populations, countries and regions confronting man-made or natural disasters.<sup>18</sup>

**Essential amendments and consequences brought about by the Treaty of Lisbon for the area of Civil Protection**

- The area of Civil Protection is provided with a specific article (article 196 'Civil Protection') in the Treaty of Lisbon.
- The area of Civil Protection is according to the Treaty of Lisbon and area of shared competence between the EU and the Member States, within which the Commission has got the right to carry out measures in order to support, coordinate and complement the measures carried out at the national level.
- From a short-term perspective the Treaty of Lisbon will not affect the links between Civil Protection and other areas. However, from a long-term perspective the cross-cutting elements of the Treaty of Lisbon may entail that the borderline between Civil Protection and other areas becomes more diffuse.

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<sup>17</sup> Article 21:2 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>18</sup> Article 21:2 in the Consolidated version of the Treaty on the Functioning of the European Union.

## 3 The Solidarity Clause of the Treaty of Lisbon and Civil Protection

### 3.1 Solidarity in the EU

Since late March 2004, in the wake of the terrorist attacks in Madrid, there has existed a *political obligation* for the Member States in accordance with the ‘Declaration on Solidarity against Terrorism’.<sup>19</sup> Hereby, the Heads of State and Government of the Member States declare that they shall act jointly and in the spirit of solidarity if one of them is the victim of a terrorist attack. The declaration was formalized at first in the Constitutional Treaty through the ‘Solidarity Clause’<sup>20</sup> and has prevailed in the Treaty of Lisbon. In relation to the declaration on solidarity, the solidarity clause includes natural and man-made disasters as well as terrorist attacks.

The solidarity clause is a product of a compromise reached by the Member States’ delegations and reads as follows:

The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or a victim of a natural or man-made disaster. The Union shall mobilise all instruments at its disposal, including the military instruments of the Member States, to:

- Prevent the terrorist threat in the territory of the Member States;
- protect the democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory, at the request of its political authorities in the event of a terrorist attack and to;
- assist a Member State in its territory, at the request of its political authorities, in the event of a natural or a man-made disaster.

Furthermore, it is stipulated that if a Member State is the object of a terrorist attack or victim of a natural or a man-made disaster, the other Member States shall

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<sup>19</sup> Declaration on combating terrorism, Brussels 25 March, 2004.

<sup>20</sup> Following chapter is built on article 222 in the Consolidated version of Treaty on the Functioning of the European Union.

offer assistance at the request of the political authorities of the stricken Member State. The Member States shall to that end *coordinate their measures within the Council* (emphasis added).

Instructions regarding the implementation of the solidarity clause are lacking. Instead, it is stated that such instructions shall be determined by the Council on a joint proposal from the Commission and the High Representative for Foreign Affairs and Security Policy. If the decision has military consequences, the Council shall decide by unanimity. Moreover, the Council shall be assisted by the Political and Security Committee (PSC) supported by the existing structures within the common security and defence policy, as well as by the new Standing Committee on Internal Security (COSI).<sup>21</sup> The European Council shall regularly assess the threats facing the EU in order to enable the EU and its Member States to take effective action.

The solidarity clause expresses the Member States' *political* will to support each other in the spirit of solidarity. It is stipulated that the solidarity clause, without setting aside the measures adopted by the Union, shall not affect the Member State's right to choose the most appropriate way of meeting its own demand regarding solidarity with the affected Member States.

The solidarity clause is applicable in relation to a crisis *within* the EU if a Member State is the object of a terrorist attack or victim of a natural or a man-made disaster. However, it is not apparent if the clause also shall be valid in relation to a crisis *outside* the EU, for example if there is a need to evacuate EU-citizens. The wording to '*protect the democratic institutions and the civilian population from a possible attack*' may possibly be interpreted as providing references to protection outside the EU as well. Moreover, the insertion of the clause under the section 'External Action of the Union' is noteworthy in this context. If a crisis strikes EU citizens abroad and the solidarity clause is referred to, the political obligation underpinning the solidarity clause will make it difficult, or even impossible, to ignore a request for help.

What possible consequences the solidarity clause will have specifically for the area of Civil Protection depend on whether it is analysed from a *short-term per-*

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<sup>21</sup> The Treaty of Lisbon introduces a new Standing Committee on Internal Security. The Committee will be further described in chapter 6.

*spective or a long-term perspective.* The two perspectives will be further developed below<sup>22</sup>.

### 3.2 The Solidarity Clause and Civil Protection from a Short-Term Perspective

*From a short-term perspective,* the solidarity clause is perceived as solely a political obligation and a manifestation of solidarity. As solidarity constitutes the actual foundation of the cooperation in the EU, which is reflected through the solidarity declaration and the principle of solidarity, the solidarity clause will not entail anything new for the Union's area of Civil Protection, or for national civil protection.<sup>23</sup>

As the solidarity clause includes formulations which give the Member States the right to choose their own way of showing solidarity, no concrete provisions are given regarding *when*, *where* and *how* a Member State shall demonstrate solidarity. This in turn means that no concrete provisions are given about whether or not the Member States are obliged to maintain a certain level of preparedness or are obligated to have available certain civil protection capacities in order to meet the requirements of the solidarity clause of the Treaty of Lisbon. In other words, the Member States have the right to show solidarity based on the capacities that already are available to the Community Mechanism for Civil Protection. Indeed, political discussions may be the case as regards whether or not a Member State has shown solidarity. However, these kinds of debates already exist at present in relation to the Community Mechanism for Civil Protection vis-à-vis to what extent the Member States have offered assistance when help has been requested. Therefore, such discussions in relation to the solidarity clause would not entail anything new for the area of Civil Protection.

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<sup>22</sup> The Treaty of Lisbon also comprises an article (42.7) that stipulates that the Member States shall aid and assist, by all means in their power, if a Member State is the victim of an armed aggression on its territory. This shall not prejudice the specific character of the security and defence policy of certain Member States. This article is excluded from this report since it's connected to the European Security and Defence Policy (ESDP). However, this does not mean that the article couldn't have effects on the area of Civil Protection from a long-term perspective. For further analysis of article 42.7 from an ESDP-perspective, see: Utterström, Anna and Eva Hagström Frisell, October, 2008. *Från ESFP till GSFP – Säkerhet och försvar i Lissabonfördraget*, User report, FOI October 2008.

<sup>23</sup> This standpoint has been predominant among the experts and officials that have been interviewed for this study.

Moreover, the Community Mechanism for Civil Protection already manages civil protection support and assistance in the spirit of solidarity in relation to the three types of situations that are addressed in the solidarity clause, namely *terrorist attacks*, *natural disasters* and *man-made disasters*. Furthermore, the wording stating that the EU also shall mobilize the military instruments of the Member States is often subject to misunderstandings. In some cases the solidarity clause is perceived as the first step towards collective security guarantees.<sup>24</sup> In other cases it is held that what actually is referred to are the military capacities such as experts, tents and CBRN decontamination teams<sup>25</sup> that are already listed by the Member States as available in relation to the Community Mechanism. The solidarity clause is not primarily about mobilizing heavy military capacities used within, *inter alia*, the European Security and Defence Policy (ESDP), which was made clear during the negotiations in relation to the Constitutional Treaty.<sup>26</sup> Nor does the solidarity clause include mutual defence obligations contrary to a Member State's non-alignment. From a short-term perspective the solidarity clause is foremost an expression of solidarity and therefore it does not change already existing practice regarding the use of different capacities within the Union.

As mentioned above, the Treaty of Lisbon stipulates that the Council, subsequent to the implementation of the Treaty of Lisbon, shall decide as to how the solidarity clause shall be materialized and implemented in practice. Prior to such a decision there is a need to clarify how a possible coordination between the Member States in order to '*act jointly*', shall be realized. First, the only instructions given to that end indicate that the Member States shall coordinate their measures within the Council that in turn will be assisted by the Political and Security Committee supported by the existing structures within the common security and defence policy as well as by the new COSI. However, no instructions are given as to *where* - the General Affairs Council or the Justice and Home Affairs Council - and *how* such coordination shall take place within the Council.

Whether or not coordination in the Council is enough in order to fulfil the obligation to *act jointly* needs to be further specified. To act jointly may entail coordination at a *political level* as well as coordination at an *operational level* (in field).

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<sup>24</sup> Kiljunen, Kimmo, *The European Constitution in the making*, Centre for European Policy Studies, Brussels, 2004, p 81.

<sup>25</sup> The acronym CBRN stands for – Chemical, Biological, Radiological and Nuclear substances.

<sup>26</sup> Interview at the Swedish Institute on International Affairs, 2008-04-10.

As for political coordination, the Crisis Coordination Arrangement within the Council may be applied in the event of a large-scale disaster.<sup>27</sup> In view of the fact that there are no specifications in the Treaty of Lisbon stating that the solidarity clause will be applied solely in relation to large-scale events, the application of the Crisis Coordination Arrangement for political coordination will be limited to certain crises. However, in practice the solidarity clause will most likely be primarily applied in relation to large-scale disasters.

As for operational coordination, none of the above-mentioned EU bodies have at present an explicit or obvious task to direct a civil protection assistance missions *within* the Union. According to some, this is a requirement in order to ensure an efficient response. Concerning the new COSI some assign the Committee an operational role corresponding to that of the Political and Security Committee, i.e. having a function when an emergency strikes, whereas others assign it mainly a strategic role, i.e. not having a specific role when an emergency strikes.<sup>28</sup> Concerning the Community Mechanism for Civil Protection, which most likely will be utilized in relation to the solidarity clause, the Member States coordinate bilaterally and decisions to assist another Member State are taken at the national level. In other words, there are at present no central EU structures that at a strategic or operational level coordinate Member States' different missions in the area of civil protection.

In this context it may be noteworthy that suggestions have come up that the EU should establish common EU civil protection capacities that may serve as a complement to the national civil protection capacities and that the Monitoring and Information Centre (MIC) should be transformed into an operational centre.<sup>29</sup> Thus, the potential future scenario of common EU civil protection resources as well as the MIC as an operational centre may enhance the possibilities for the Member States to 'act jointly' regarding civil protection. However, what role and capacity the MIC will have in relation to the solidarity clause, when capacities other than civil protection are requested, remain to be seen. Indications have been given from, *inter alia*, a national representative to the EU working with civil protection matters that in the event of a major catastrophe requiring heavy military assets such as aircraft, heavy logistics and so forth, the MIC, in its present form,

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<sup>27</sup> The Crisis Coordination Arrangement will be further described in chapter 5

<sup>28</sup> These two perspectives have been identified on the basis of the interviews made for this report.

<sup>29</sup> See for example, Commission, Communication: A coordinated and stronger EU disaster response capacity at home & abroad, IP/08/385, Brussels 5<sup>th</sup> March 2008; Barnier, Michel, *For a European civil protection force: Europe aid*. 2006.

is not perceived to have the capability, the knowledge or the experience to coordinate such assets. Instead structures within the common security and defence policy placed within the Council are believed to be of more value in such situations.<sup>30</sup>

In sum, it is, from a *short-term perspective*, difficult to claim that the solidarity clause will bring about anything new for the cooperation within Civil Protection or for the EU as a whole, including the existing crisis management structures. From this perspective, the solidarity clause is instead seen as only strengthening the already existing political obligation to act in solidarity in the event of a terrorist attack, a natural disaster or a man-made disaster striking another Member State. The main requirement of the Member States at this stage is the outlining of a distinct national strategy regarding how the solidarity clause shall be understood and what approach will be used in the negotiations of the further implementation of the solidarity clause, not least in relation to the future joint proposal of the Commission and the High Representative for Foreign Affairs and Security Policy.

### **3.2.1 The European Union Court of Justice and the Solidarity Clause**

In theory, the solidarity clause is a treaty provision under the jurisdiction of the European Union Court of Justice (EUCJ)<sup>31</sup> which is interpreted by some as implying a binding legal obligation. According to some Member States, the voluntary character of solidarity is problematic since assistance is not always provided for by other Member States in the event of an emergency or disaster. The insertion of the solidarity clause in the jurisdiction of the EUCJ is seen as one step towards finding a solution to that 'problem' and to ensuring that capacities will be guaranteed when needed. However, the general and vague wording of the clause raises questions as to how the EUCJ will deal with this provision in practice, and what possibilities there are for the EUCJ to actually inspect the Member States' compliance with the requirements of the solidarity clause.

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<sup>30</sup> Interview, Brussels, 2007-11-29.

<sup>31</sup> As a result of the Treaty of Lisbon the European Community Court of Justice will be referred to as the European Union Court of Justice. Article 19 in the Consolidated version of the Treaty of the European Union.

According to an earlier study,<sup>32</sup> such questions will arise specifically in situations when a Member State declines another Member State's request for assistance or if a Member State asks for assistance from other Member States to act preemptively, since it is not established if the solidarity clause covers such action or not. It may be noteworthy that the EUCJ is somewhat reluctant to deal with politically sensitive issues.<sup>33</sup>

The EUCJ is understood to have a rather limited possibility to scrutinize a Member State's compliance or not with the solidarity clause. The grounds upon which the EUCJ will base its judgement will most likely depend on future events, the development of more detailed arrangements in relation to the solidarity clause and the actual implementation of the solidarity clause, a development which may be relevant first from a long-term perspective.

Thus, from a legal point of view and from a short-term perspective, the solidarity clause will not have implications for the area of Civil Protection.

### 3.3 The Solidarity Clause and Civil Protection from a Long-Term Perspective

Next an analysis will be made of the potential consequences of the Treaty of Lisbon for the area of Civil Protection from a *long-term perspective*.

First, it shall be stressed that the aspects described below will become relevant only if there is a *political will and a political momentum* within the EU to actually realize the content of the solidarity clause. At present such political determination seems limited. Important as well will be to what degree the Member States actually fall victims to crises requiring the application of the solidarity clause.

- The further deepening and development of the cooperation in the area of Civil Protection

If analysed through a long-term perspective, the solidarity clause will not automatically lead to a deepened cooperation in the area of Civil Protection. Nevertheless, the introduction of the solidarity clause in combination with the new Article 196 on Civil Protection may be seen as offering incentives to further de-

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<sup>32</sup> Shev, Hanna, *The solidarity clause – it's present and future effects from a constitutional perspective*, Master thesis, Lund/Sweden, 2005-05-30.

<sup>33</sup> Ibid, 2005, p 25-26

velop the cooperation, as well as to further develop already existing Civil Protection structures<sup>34</sup> in order to meet the ‘obligations’ of the solidarity clause. For example, possible initiatives by the Commission in the area of Civil Protection may be justified through the solidarity clause. Member States who have a strong ambition to deepen the cooperation in the area may also use the wording of the solidarity clause as a political instrument to that end.

- The establishment of financing arrangements in relation to the solidarity clause.

According to the principle underpinning the Community Mechanism for Civil Protection, the Member State requesting assistance in relation to a crisis *within* the EU shall also be responsible for the financing. However, in practice different methods are applied among the Member States, where some offer assistance without requiring the receiving country to pay. Therefore, one consequence of the solidarity clause may be that it becomes more difficult to request a stricken Member State to pay for the assistance received since the actual solidarity of such an act may be questioned. From a long-term perspective, this may in turn lead to new practice in the area of Civil Protection regarding the financing. At least, financing arrangements will need to be elaborated in relation to the solidarity clause. Regarding civil protection assistance missions outside the EU, the guiding principle is that no cost shall fall on the receiving country in interventions in Official Development Aid (ODA) recipient countries. The solidarity clause will have no effects on this principle.

- The division of duties as well as the further coordination between the different sectors and EU bodies involved in the Union’s crisis management activities will need to be elaborated and enhanced in relation to the solidarity clause.

For example, the solidarity clause explicitly interlinks COSI and the PSC. However, the actual function of COSI needs to be defined before the coordination between the two Committees is established. Given that COSI is provided with an operational role, having a role in the event of a crisis, questions may be raised concerning the role of the two Committees in relation to different crises. It may, for example, be argued that the role of the PSC will not be evident if the solidarity clause is applied in relation to a natural disaster since the Committee does not usually handle these kinds of matters. Nor will the division of duties be apparent

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<sup>34</sup> For example the Community Mechanism for Civil Protection and the MIC (Monitoring and Information Centre).

in the event of a crisis striking EU citizens abroad that triggers the ‘application’ of the solidarity clause.

Furthermore, questions are raised regarding the division of duties between COSI and the Crisis Coordination Arrangements (CCA) in the event of a crisis.<sup>35</sup>

Better coordination and cooperation between EU crisis management structures within the Commission and the Council will be needed as well in order to meet the requirements of the solidarity clause.

- The content and the implications of the wording “all instruments” will need to be further discussed.

No further specifications are given in the Treaty of Lisbon regarding what ‘all instruments’ actually contain. These may include legal and police capacities as well as civil protection, intelligence activities and military capacities. Some claim that the lack of such specifications raises questions such as: Are there capacities that have to be used in relation to the solidarity clause? How shall a situation be managed where the solidarity clause is applied and where, *inter alia*, the civil protection capacities are already in use in other commitments? Although references to the ESDP were excluded in earlier negotiations in relation to the Constitutional Treaty, there are those who claim that the solidarity clause makes it possible, from a long-term perspective, to interlink the capacities and structures within the ESDP to the EU’s internal security.<sup>36</sup> In this context it is noteworthy that the idea of creating a solidarity clause was initially put forward in the defence working group in the Convention preceding the Constitutional Treaty.<sup>37</sup> Moreover, it has been held that the solidarity clause would not have been introduced in the Constitutional Treaty and in turn in the Treaty of Lisbon if there had been no further ambitions underpinning it than solely a strengthening of the al-

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<sup>35</sup> The CCA is a cross-cutting and political arrangement that is supposed to be activated in the event of a major crisis or emergency, inside or outside the EU, striking several Member States. The CCA shall enable effective collective decision-making at a high political level in Brussels. See for example Manual on EU Emergency and Crisis Coordination (Draft) Manual on EU Emergency and Crisis Coordination (Draft), version 04/04/2006; 09:22:37.

<sup>36</sup> Åhman, Teresa, *Frankrike, Tjeckien och Slovenien – Tre perspektiv på EU: s krisberedskap (France, the Czech Republic and Slovenia – Three perspectives on crisis preparedness in the EU)*. The author’s translation. MEMO, 2008-01-18.

<sup>37</sup> Jarlsvik, Helén och Maria Oredsson, *Solidaritetsklausulen – Konsekvenser för den europeiska säkerhets- och försvarspolitiken (The solidarity clause – Consequences for the European Security and Defence Policy)*. The author’s translation. FOI MEMO 1068, Oktober 2004. p 9.

ready existing solidarity declaration.<sup>38</sup> In this context, a discussion about the actual content of ‘all instruments’ and what possible consequences the wording may imply seems relevant in order to ensure a common approach among the Member States.

On the other hand, the wording may be interpreted as being all-encompassing, hereby ensuring that no capacities of potential added value for crisis management are excluded. In a situation of a real large-scale natural catastrophe, the use of ‘all instruments’, will most likely not be seen as controversial when the lives of EU citizens are at stake. In relation to terrorist attacks, however, that is more politically sensitive, the possible use of military assets is more challenging. Another intricate question regarding military assets is raised in relation to the possible application of the solidarity clause in preventive action.

- There will be a need for an enhanced coordination within and between the Member States’ crisis management systems.

Further coordination within and between Member States’ crisis management systems will be needed in order to meet the efficiency requirement, have an overview of appropriate capacities as well as to have the ability to, at short notice, mobilize the capacities requested. Moreover, an analysis of national legislation may be required in order to ensure the capacity to receive assistance.

Finally, there are a number of more philosophical questions that could be further elaborated in relation to the solidarity clause: What is the definition of solidarity and how shall it be put into practice in order to ensure the fulfilment of the solidarity clause? Where should the line be drawn between national responsibility and European solidarity? To what extent should Member States be able to manage a crisis before assistance in the name of solidarity could be requested for? Can solidarity be made used of? How shall the solidarity clause be seen in relation to solidarity within for example NATO?

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<sup>38</sup> Interview, at the Swedish Civil Contingencies Agency (at that time the Swedish Rescue Services Agency) 2008-04-03.

**Essential amendments and consequences for the policy area of civil protection as a result of the Treaty of Lisbon**

*Solidarity clause*

- The Treaty of Lisbon includes a specific *solidarity clause* in the event of a terrorist attack, man-made or natural disasters.
- From a short-term perspective the solidarity clause will not entail any specific consequences for the European cooperation in the area of civil protection or for the Member States' national civil protection.
- From a long-term perspective the strengthening of the solidarity clause in the Treaty of Lisbon may lead to greater pressure to further deepen and develop the cooperation.

## 4 To Develop Policy in the Area of Civil Protection

### 4.1 Introduction

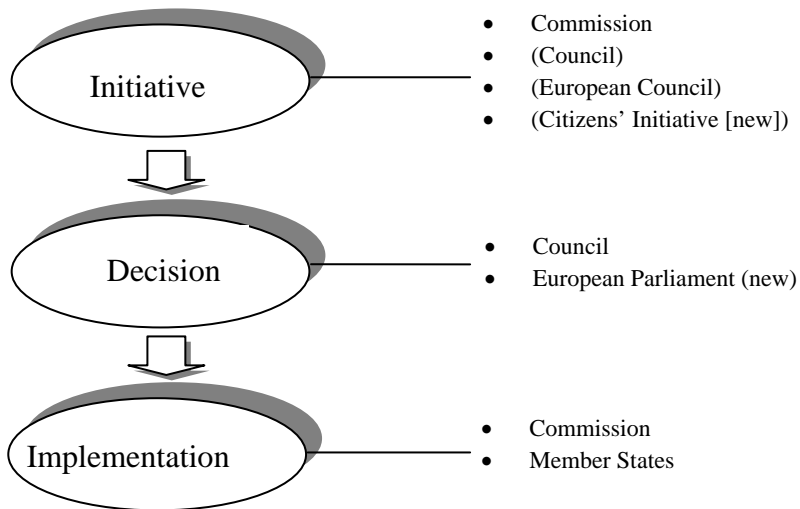
The previous chapter focused on the frameworks and the fundamentals of the EU's policy area of Civil Protection. In the following chapter this picture will be complemented by focusing on the changes brought about by the Treaty of Lisbon regarding the actual development of policy in the area. In other words, this chapter will be devoted to the *policy process* for the area of Civil Protection. Although, this report anticipates that the Treaty of Lisbon may increase the number of initiatives taken in the area, it shall be stressed that the Lisbon Treaty not necessarily will lead to more *legislative* acts for Civil Protection. An increased number of more non-binding recommendations and opinions may as well be the case. The process described below will mainly be applied in relation to the development of new legislation for Civil Protection.

In general, the policy process in the EU can be divided into three different phases which clarify the role of each EU institution as well as the Member States in the policy process – initiative, decision and implementation.

### 4.2 The Different Phases in the EU Policy Process

A policy process in accordance with the Treaty of Lisbon has not yet been seen in practice for the area of Civil Protection at the time of this report (spring 2009). Practical experiences concerning the possibilities and challenges in the policy process are missing. What comes next is therefore an estimated picture of the policy process according to the Treaty of Lisbon developed by the author where a slightly simplified version of the co-decision procedure is added to the policy process as it was shaped prior to the implementation of the Treaty of Lisbon. The aim is not to offer an exhaustive description of the EU policy process but rather to provide the reader with an overview of the policy process.

After the description of the policy process, the changes brought about through the Treaty of Lisbon and the possible consequences these changes may entail for the area of Civil Protection are elaborated and analyzed.



*Figure 2: The three phases in the EU policy process*

#### 4.2.1 Initiative Phase

The initiative phase is rather complex, containing all activities that may contribute to the formulation of new legislation or policy in the EU. The Commission has an important role to initiate policy in the area of Civil Protection. However, the Commission may also be requested by the Council, the European Council or through a citizens' initiative (the citizens' initiative will be further described below) to present a proposal.

When developing a proposal for EU legislation, the Commission has three different forms of legislative instruments to choose from – regulations, directives and decisions. Regulations are binding in their entirety and directly applicable in all Member States. Directives bind the Member States to the result to be achieved but leave room for manoeuvre regarding forms and means of transposition into national legislation. Directives aim at harmonizing national legislation. Decisions are fully binding in those to whom they are addressed. Moreover, the Commission may adopt non-binding and declaratory recommendations and opinions.

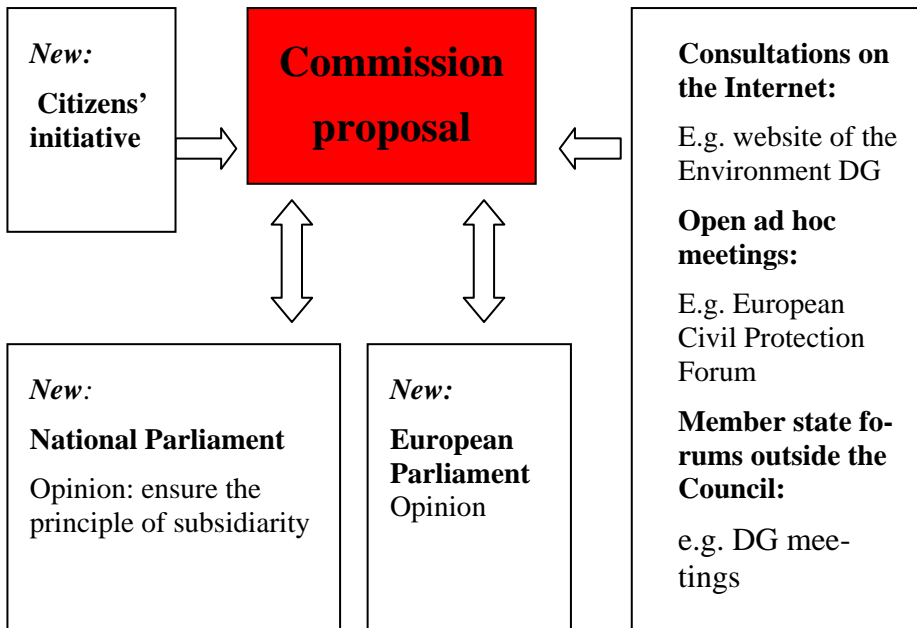


Figure 3: The initiative phase in the policy process

Prior to introducing a proposal to a legislative draft by the Commission different activities – public consultations on the internet, open ad hoc meetings, Member States’ forums outside the Council, informal meetings with Member State agencies, expert meetings, etc. – are arranged by the Commission, and sometimes by the Council, with a view to setting a platform for continuing the policy process as well as obtaining legitimacy for the further work.<sup>39</sup>

Open ad hoc meetings have been arranged within the area of Civil Protection. For example, a European Civil Protection Forum was held in 2002 and in 2007 where, *inter alia*, challenges and the role of the EU in the area were discussed. These forums address anyone interested in civil protection – other EU institu-

<sup>39</sup> Jönsson, Thomas and Helén Jarlsvik, *Krisberedskapsmyndigheten och Europeiska Unionen – En analys av hur KBM skulle kunna delta i EU-arbetet (The Swedish Emergency Management Agency (SEMA) and the European Union – An analysis of how SEMA could participate in the work within the EU)*. Author’s translation. FOI-1654, 2005, p 47-48.

tions, national civil protection authorities, humanitarian aid organisations and the public at large, etc. Moreover, in connection with the review of the Community Mechanism for Civil Protection consultations on the Internet were arranged on the website of the Commission's Environment Directorate-General.<sup>40</sup> In addition, the national Director-Generals (Heads of national civil protection authorities) for civil protection assemble (DG meetings) twice a year to discuss broader policy issues as well as the general nature of the continuous cooperation in the area.

From these different meetings and conferences, from a possible citizens' initiative or from a request from the Council or the European Council, the Commission draws up or concludes a draft proposal for a binding or non-binding act. Prior to the proposition of new legislation, the Commission may notify the other EU-institutions and other interested by presenting policy proposals such as green papers, white papers and communications.<sup>41</sup> Proposals by the Commissions have to be adopted by the College of Commissioner before presented to the other institutions for decision-making or opinion.

The draft proposal is, in turn, handed over to the European Parliament for an opinion. The draft proposal is also submitted to the national parliaments which have the role of ensuring the compliance with the principle of subsidiarity (see below).

So far the proposal is found in the borderland between the initiative phase and the decision phase.

#### **Important changes in the initiative phase**

- Article 196 provides the Commission with a formalized mandate to put forward initiatives in the area of Civil Protection.
- The 'citizens' initiative' is introduced in the Treaty of Lisbon.
- A legislative draft in the area of Civil Protection is handed over to the European Parliament for an opinion.
- A legislative draft in the area of Civil Protection is also submitted to the national parliaments to ensure the compliance with subsidiarity.

<sup>40</sup> Jönsson, Thomas and Helén Jarlsvik, 2005, p 48.

<sup>41</sup> Green papers are discussion papers that outline proposed actions in the policy area. These often include several policy options and can be subject to public consultation. White papers consist of a broad set of proposals for a specific policy area and can outline the desired development in that area. Communications present the actions that the Commission intends to taken in a specific policy area, including coming proposals for legislation.

#### 4.2.2 Decision Phase

Prior to the implementation of the Treaty of Lisbon, decisions in the area of Civil Protection were taken by consensus in the Council. However, the Treaty of Lisbon stipulates that decisions in the area shall be taken by qualified majority in the Council but without disregarding the fact that the competence of the EU is to *support, coordinate and complement* the Member States.<sup>42</sup>

Within the Council, the decision phase in relation to Civil Protection may, in general, be divided into three levels:

- The ministerial level in the Justice and Home Affairs Council;<sup>43</sup>
- The ambassadorial level in the Permanent Representatives Committee (COREPER);
- The official level in the Working Party on Civil Protection (PROCIV).

Although decisions on new EU legislation are formally taken by the Member States' ministers in the Council, the principal negotiations are held in the working groups and committees.

PROCIV is the main forum for the negotiations concerning Civil Protection in the EU. Since the Member States often have been able to reach an agreement in PROCIV, COREPER has seldom negotiated Civil Protection issues.

The equal legislative power between the Council and the European Parliament means that legislative acts must be adopted both in the Council by a qualified majority, and in the European Parliament by an absolute majority. The work in the European Parliament is organized in 20 specialized standing committees (subcommittees and temporary committees may be set up). The Committee on the Environment, Public Health and Food Safety is responsible for Civil Protection within the Parliament.

If the Council and the European Parliament are unable to reach an understanding, a 'Reconciliation Committee' is appointed. The Reconciliation Committee assembles representatives from the Council, the European Parliament and the Commission with the aim of reaching an agreement between the two institutions. If the Reconciliation Committee cannot reach an agreement the draft proposal is

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<sup>42</sup> Article 196 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>43</sup> Generally the Justice- and Home Affairs Council take decisions in the area. However, there are no legal obstructions preventing another Council-constellation to take decisions in the area.

dismissed; if they do, the draft proposal is subject to a decision in the Council and in the European Parliament.<sup>44</sup>

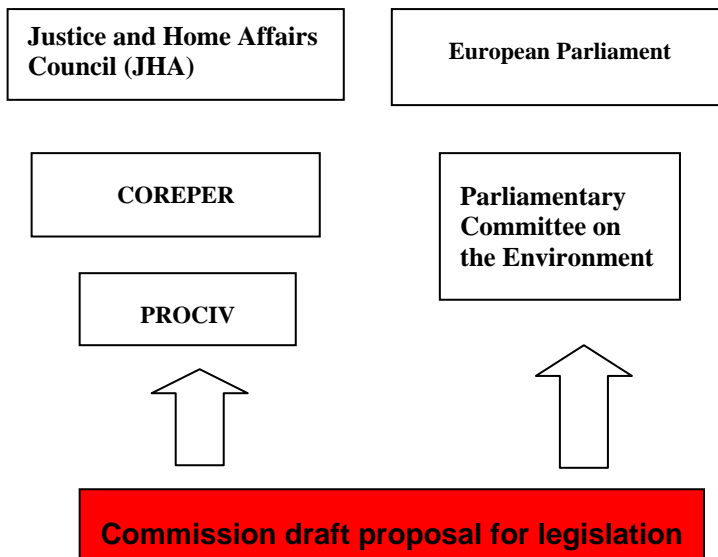


Figure 4: The decision phase in the policy process

<p style="text-align: center;"><b>Important changes in the decision phase</b></p> <ul style="list-style-type: none"> <li>• New legislation in the area of Civil Protection is no longer adopted by unanimity in the Council, instead qualified majority is applied.</li> <li>• The EU's 'ordinary legislative procedure' will be applied in relation to the area of civil protection. The European Parliament will have equal legislative power with the Council and has the possibility to amend a draft proposal from the Commission. Prior to the Treaty of Lisbon the European Parliament was only consulted in relation to Civil Protection.</li> </ul>
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<sup>44</sup> This is the procedure according to the co-decision procedure. See for example: Consilium of the European Union, *Co-decision Guide*; European Parliament, Council, Commission 'Joint Declaration on Practical Arrangements for the co decision procedure' (article 251 of the EC Treaty) 2007/C 145/02.

### 4.2.3 Implementation

During the implementation phase, the policy and the regulations formulated in the legislative act is specified through e.g. rules, working programmes, projects etc., with the aim to enable its practical implementation. The Commission has got the overall responsible of ensuring that legislation is implemented in the Member States and is to that end supported by the committees in the so called comitology. These committees consist of representatives from the Member States, and are chaired by the Commission. The influence of the Member States in the implementations phase is hereby supposed to be ensured. In these committees the Commission informs the Member States about the planned measures for implementing legislation. Member States may also present their opinions and their experiences of the implementation process so far. Certain decisions are also taken within the committee concerning the nature and the priorities within the legislation.

The legal acts establishing the Community Mechanism for Civil Protection<sup>45</sup> and the Civil Protection Financial Instrument are implemented through specific committees.<sup>46</sup> For example, regarding the Community Mechanism for Civil Protection, procedures of the Mechanism for Civil Protection are discussed and agreed upon.

In this context it may be interesting to note that a Council decision was adopted in 2006 which enhanced the role of the European Parliament in the comitology procedure. The Commission shall inform the European Parliament of committee proceedings in general. Moreover, the Commission shall pass on documents connected to these activities and inform each time proposals for measures are forwarded by the committee to the Council.<sup>47</sup> Although this innovation is not part of the Treaty of Lisbon it is interesting to note that the influence of the European Parliament in general has been enhanced in the policy process.

To conclude, the Treaty of Lisbon does not entail any changes to the implementation of legislation in the area of Civil Protection.

#### **Changes in the implementation phase**

- No changes have been identified.

<sup>45</sup> Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (2007/779/EC, Euratom).

<sup>46</sup> Council Decision of 5 March establishing a Civil Protection Financial Instrument (2007/162/EC, Euratom).

<sup>47</sup> Joint Study CEPS, EGMONT and EPC, *The Treaty of Lisbon – Implementing the Institutional Invitations*, November 2007, p 9.

### 4.3 Consequences Brought About by the Treaty of Lisbon for Civil Protection in the Policy Process

The Treaty of Lisbon strengthens the competence of the Union to carry out actions to *support, coordinate and complement* actions of the Member States in the area of Civil Protection. Next, an analysis will be made of the potential consequences for Civil Protection as a result of the new provisions of the Treaty of Lisbon for the policy process. Eight specific aspects will be addressed.

First, the Treaty of Lisbon introduces an article 196 on Civil Protection through which the Commission is provided with a formalized, and, according to some, even strengthened mandate to introduce legislation in the area. Thus, keeping in mind that the Commission so far has shown proof of having a rather apparent ambition to strengthen and deepen the cooperation in the area, Article 196, in combination with the solidarity clause of the Treaty of Lisbon, may be perceived to further strengthen the role of the Commission. An increased number of initiatives by the Commission may be a possible consequence.<sup>48</sup> It shall be noted that, although Civil Protection is strengthened in the Treaty of Lisbon through a specific article, it will not automatically lead to more legislative acts – regulations, directives or decisions. Recommendations and opinions may be as frequently applied. However, for the Commission to be able in practice to exert influence in the area of Civil Protection, a legal instrument will be required. It has been held that a potential new legal act for civil protection, besides the Community Mechanism for Civil Protection and the Financial Instrument, may consist of a legal act – directive – containing disaster prevention measures.<sup>49</sup>

Moreover, it is estimated that previous initiatives that have been promoted in the area by the Commission, not least the Barnier Report<sup>50</sup> or other Member States, will receive renewed attention in relation to the introduction of the article for Civil Protection. The Barnier Report contains proposals regarding, *inter alia*, the establishment of a ‘European Civil Protection Force’ which may operate both within as well as outside the EU, the establishment of common EU capacities such as airplanes and helicopters and a strengthened MIC provided with an operational capacity.

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<sup>48</sup> A conclusion which is fortified through the different interview made within this report.

<sup>49</sup> Interview, Sweden, 2008-03-27.

<sup>50</sup> Barnier, Michel, *For a European Civil Protection Force: Europe Aid*, 2006.

At a national level, an increased number of initiatives by the Commission may entail an increased workload for the Member States' ministries and authorities, as they may need to deal with an increased number of proposals. Thus, ministries and authorities at the national level may need to prepare for more activity in the in the area of Civil Protection.

In sum, Article 196 may trigger the Commission and the Member States having an outlined strategy for the further development of the cooperation, being more active and presenting initiatives to that end.

Second, the Treaty of Lisbon entails that the new ordinary legislative procedure of the Union<sup>51</sup> will be applied in the area of Civil Protection, which will involve the Council sharing the legislative power with the European Parliament in accordance with the so-called co-decisional procedure. The European Parliament as a co-legislator entails that a legislative draft in the area of Civil Protection in the initiative phase shall be submitted to the European Parliament for an opinion, and that a legislative act for Civil Protection, besides by the Council, must be adopted by the European Parliament. Hence, the European Parliament is given a greater possibility to exert influence in the development of new policy in the area of Civil Protection. Prior to the Treaty of Lisbon the European Parliament had the opportunity to give an opinion on a proposal by the Commission. However, the Council was not obliged to consider the European Parliament's opinion in accordance with the *consultation procedure*. The shared legislative power between the Council and the European Parliament brings about an enhanced democratic accountability for Civil Protection. For the first time the European Parliament will be directly involved in the area of Civil Protection.

In relation to the new, ordinary legislative procedure, the enhanced role of the European Parliament is frequently stressed as being the most important novelty in the Treaty of Lisbon for the EU's policy process.<sup>52</sup> It is, *inter alia*, held that 'visibility' and 'activity' are important for the European Parliament and in turn that *response* in relation to Civil Protection is perceived to be of great importance, which especially is reflected through the resolutions that have been adopted by the European Parliament whose mandatory period ended in June 2009. For example, the European Parliament has been positive to the establishment of a European civil protection force that can immediately react to crises, as

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<sup>51</sup> Article 289 and 294 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>52</sup> This is an opinion that was forwarded during a majority of the interviews made for this report.

proposed in the Barnier Report.<sup>53</sup> It remains to be seen what preferences the new European Parliament elected in June 2009 will have in the area of Civil Protection.

The introduction of the European Parliament as co-legislator in the area of civil protection will require that negotiations are held at an early stage with the European Parliament. The improved role of the European Parliament is estimated to serve in favour of the development that has been witnessed so far in the area, rather than entailing a possible obstruction.

Moreover, there tends to be a North-South divide in the Council regarding the further development of Civil Protection. The northern European countries tend to emphasize the national responsibility, whereas southern Europe tends to stress the need for the EU to take a greater responsibility. Whether or not a similar division of opinions will be reflected in relation to the political parties of the European Parliament or if other divisions will arise and what consequences this may bring about for the area of Civil Protection remain to be seen. Depending on future events or the occurrence of a political momentum, Civil Protection may become an important political topic for the European parties and in turn for the European Parliament.

Third, the ordinary legislative procedure means that qualified majority voting will replace consensus within the Council. The changes are brought about to make decision-making in the Council more efficient. In theory, qualified majority voting entails a reduced possibility of a Member State blocking a decision.

An important conclusion is therefore that proactivity in general in the initiative phase will become even more important as a result of the Treaty of Lisbon and the new voting procedure, especially for the smaller Member States. If a Member State wishes to influence a proposal in a favourable way, it will be necessary to be active and to present initiatives to that end at an early stage. To participate in the different activities arranged by the Commission will be imperative in order to exert influence on the further development of the area of Civil Protection. Moreover, the identification of like-minded countries to form coalitions and alliances will be essential.

However, there are divergent opinions as regards the actual importance of the new voting procedure in the Council – qualified majority – for the area of Civil

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<sup>53</sup> See *inter alia* European Parliament resolution of 4 September 2007 on this summer's natural disasters.

Protection. Some fear that it will become more difficult to block a decision and that the Member States which aim to deepen and develop the cooperation in the area may find it easier to do so as a result of the Treaty of Lisbon. Others believe that qualified majority voting will not bring about any important changes since the ‘blocking minority’ will not be difficult to find.<sup>54</sup>

Prior to the Treaty of Lisbon, in an EU of 27 Member States, a qualified majority is obtained when 255 out of a total of 345 votes are gained.<sup>55</sup> In other words, 91 votes or more are needed in order to form a blocking minority. Below, the distribution of votes for each Member State is specified.

Germany, France, Italy, United Kingdom	29
Spain, Poland	27
Romania	14
The Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Denmark, Ireland, Lithuania, Slovakia, Finland	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3
<b>TOTAL</b>	<b>345</b>

*Figure 5: Distribution of votes for each Member State<sup>56</sup>*

Moreover, it is held that the new provisions for qualified majority voting that will enter into force from 2014 as a result of the Treaty of Lisbon may make the obtaining of qualified majority more complicated in the area of Civil Protection. Finding alliances transcending the North-South divide and further coordination between the Member States will hereby be required. On the one hand, an important challenge will therefore be to identify common goals among the Member

<sup>54</sup> These two perspectives were identified out of the interviews made for this report.

<sup>55</sup> Each Member State has got a certain number of votes in relation to the size of the country. Germany, France, Italy and Great Britain has got most votes, 29 each, and Malta has got the lowest number of votes, 3.

<sup>56</sup> Council of the European Union homepage, Distribution of votes.

States in order to dissolve the already established northern and southern block in favour of 'new alliances'. In order for a decision to be adopted by qualified majority from 2014 at least 55% of the Member States in the Council (at least 15 of the Member States), which shall represent 65% of the population, will have to vote for a proposal. A blocking minority must in turn consist of at least 4 Member States that represent 35% of the population.<sup>57</sup>

On the other hand, even though qualified majority voting will be applied and the northern-southern division will prevail, it will not necessarily mean that one side decides to block the other.

In sum the consequences of the new voting procedure in the Council for Civil Protection is yet highly uncertain. It shall once more be stressed that although formal decisions are made in the Council, the discussions, negotiations and agreements are most often carried out and reached between the Member States already at an earlier stage within PROCIV.

*The fourth* implication is that the Treaty of Lisbon provides the national parliaments with an enhanced and strengthened role in the policy process<sup>58</sup>, which also brings about an increased democratic accountability for the area of Civil Protection. The national parliaments are now given a strengthened role of ensuring compliance with the principle of subsidiarity in the policy process. More specifically it means to guarantee that legislation is carried out at the lowest, most effective level. The Treaty of Lisbon stipulates that the Commission shall submit the draft proposal for legislation to the national parliaments and that each draft proposal must be justified in relation to the principles of subsidiarity and proportionality. Eight weeks must pass from the time a draft proposal is made available to the national parliaments until it is put on the agenda of the Council for a decision. Each national parliament in turn has two votes at its disposal. If one-third of the national parliaments oppose a draft proposal, the Commission shall reconsider the legislative text; one-quarter of the national parliaments are sufficient within the areas of judicial cooperation and criminal matters and within police cooperation.

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<sup>57</sup> Up until 2017 a Member State may demand that the "old" form of qualified majority is applied.

<sup>58</sup> Through the Treaty of Amsterdam a protocol regarding the role of the national parliaments was introduced. The protocol contains provisions about the information that shall be handed over to the national parliaments. Moreover it is stipulated that six weeks need to pass between the time when a legislative draft is made available to the European Parliament and the Council and the time when the draft will be subject for decision in the Council. 'Protocol No 1 on the role on national parliaments in the European Union' and 'Protocol No 2 on the application of the principles of subsidiarity and proportionality' therefore strengthens the role of the national parliaments.

Furthermore the Treaty of Lisbon states that the Council shall submit to the national parliament's information about the proceedings in the Council by sending the Council agendas and its conclusions directly to the national parliaments.

The actual impact on Civil Protection concerning the enhanced role of the national parliaments in the policy process is considered to be minor. Instead an increased workload for the national parliaments may be the result. Nevertheless, in those Member States where the national parliaments already hold a strong position, the Treaty of Lisbon is not expected to bring about any remarkable changes.

*The fifth* implication of the Treaty of Lisbon is that the actual policy process involving Civil Protection will be prolonged. The Commission's proposal shall be submitted to the Council, the European Parliament and the national parliaments. Thus, the increased number of 'actors' in the policy process may increase the risk of conflicts and delays in relation to different draft proposals for Civil Protection.

*The sixth* implication of the Treaty of Lisbon is the establishment of the so-called 'citizens' initiative'.<sup>59</sup> The EU citizens are hereby given the possibility to request the Commission to present a specific proposal by gathering a million signatures from a significant number of Member States. However, since it is not stipulated that the Commission is obliged to put forward a proposal as a consequence of a citizens' initiative, this strengthening is estimated to be merely a symbolic gesture in order to increase the democratic features of the EU policy process. Nevertheless, depending on future events the utilization of the citizens' initiative may become more probable and, for example, in the aftermath of a new tsunami, a citizens' initiative will most certainly be difficult to ignore.

The seventh implication of the Treaty of Lisbon is the greater possibility to establish a so-called 'enhanced cooperation' to further its objectives, protect its interests and reinforce the integration process.<sup>60</sup> The option for groups of Member States to closer cooperate was already given with the implementation of the Treaty of Amsterdam in 1999<sup>61</sup>; this was, however, limited to certain policy areas such as the European Monetary Union (EMU) or the Schengen Agreement. The Treaty of Lisbon expands the scope by including more policy areas where the 'enhanced cooperation' may be applied and specifies the forms of the cooperation. In order to start enhanced cooperation it is stipulated that at least nine

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<sup>59</sup> Article 11:4 in the Consolidated version of the Treaty on the European Union.

<sup>60</sup> Article 20 in the Consolidated version of the Treaty on the European Union.

<sup>61</sup> Joint Study CEPS, EGMONT and EPC, 2007, p 99.

Member States must participate and that the Council shall take a decision by qualified majority with the approval of the European Parliament.<sup>62</sup>

The enhanced cooperation may, at least in theory, be applied in the area of Civil Protection.

*The eight* implication of the Treaty of Lisbon is the introduction of the increased provision concerning national identity, which specifies that the EU, including the EUCJ, is obliged to respect the national identity of the Member States as it is expressed in the political and constitutional founding structures. Regional and local self-government is especially stressed, but also territorial integrity, the maintenance of law and order and the protection of internal security. In addition, it is stipulated that national security is the exclusive responsibility of each Member State.<sup>63</sup> In some Member States, for example in Germany, the responsibility for questions concerning Civil Protection are to an important degree found within the states (*Länder*).

Although not constituting a principle with direct linkages to Civil Protection, this article may have implications for the area, at least in theory. A Member State may oppose an EU regulation in the area that is not seen as compatible with those regulations found at the national level by referring to the protection of the national identity. Regulations regarding the principle of public access to official records are one example.

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<sup>62</sup> As regards the Common Foreign and Security Policy, decisions shall be taken through the procedure of consensus; the European Parliament is in these matters only consulted.

<sup>63</sup> Article 4:2 in the Consolidated version of the Treaty on the European Union.

### **Important consequences of the Treaty of Lisbon for the development of policy in the area of civil protection**

- The voting procedure in the Council will be changed from consensus to qualified majority voting, which reduces the possibility of each Member State to veto a decision in the area of Civil Protection.
- The role of the European Parliament and the national parliaments is strengthened and made more apparent, which increases the democratic control of the area of Civil Protection. At the same time the enlarged number of actors in the policy process may lead to more conflicts and delays which may prolong the decision-making in the area.
- The strengthening of the area of Civil Protection and the introduction of the solidarity clause may, from a long-term perspective, increase the driving force of the Commission to present initiatives to deepen or develop the European cooperation in the area of Civil Protection.
- As a result of the potential increase in the number of draft legislation from the Commission, the workload of the ministries and the authorities within the Member States may increase.
- The initiative phase of the policy process will, in general, become important for the smaller Member States of the Union, who carry little weight as regards voting, in order to influence the cooperation within Civil Protection.
- The possibility of a 'citizens' initiative' as well as 'enhanced cooperation' in the area of Civil Protection is introduced.

## 5 The Institutional Framework

### 5.1 Introduction

The focus of the previous chapter was on the principles and the legal framework underpinning the policy area of Civil Protection. In the following chapter that analysis is complemented through the additional focus on the *institutional framework* within which the policy process takes place and which consists of the EU institutions.

Next the conclusions solely are presented. The more detailed analysis is found in Appendix 6.

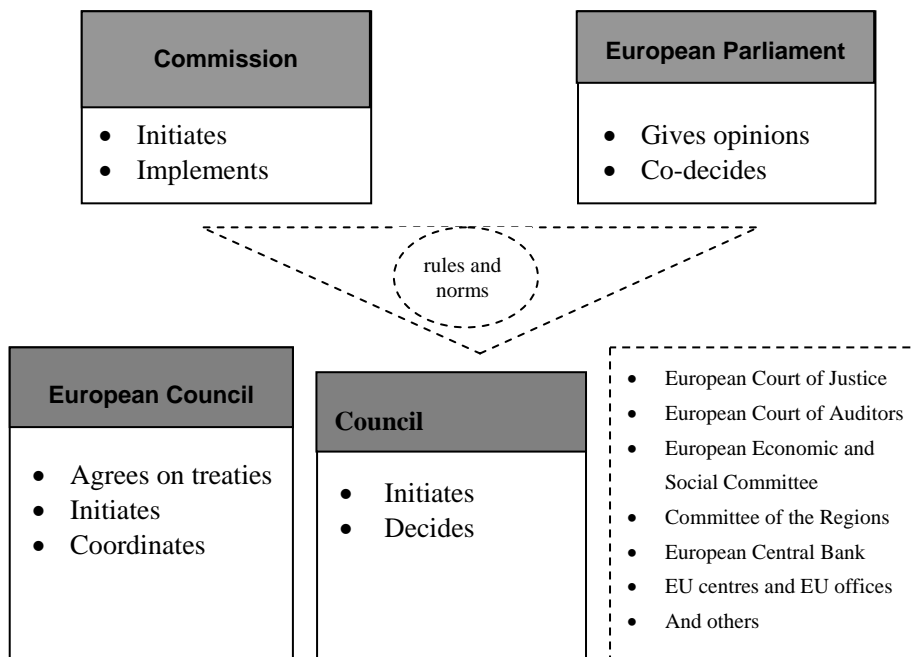


Figure 6: The EU institutions of importance to the Union's crisis preparedness

## 5.2 Consequences for Civil Protection of the Institutional Changes

The Treaty of Lisbon brings about important changes as regards the balance of power between the EU institutions that may have significant effects on Civil Protection. As concluded previously, the Council will share the legislative power in the area of Civil Protection with the European Parliament. This implies a certain shift in the balance of power between the Council and the Commission. Through the transition from unanimity to qualified majority voting in the Council, the Commission may more easily pursue initiatives regarding for example new legislation in the area.

The Treaty of Lisbon also brings about changes within the different institutions as regards their organisation and function. The Changes in relation the European Council, the Commission and the European Parliament as well as the introduction of a President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy are not expected to entail any direct consequences for Civil Protection. Indeed, if the people acquiring the different positions have personal interests in Civil Protection, positive consequences may be the case.

However, depending on the status assigned Civil Protection in the future, aspects, such as the appointment of a new Commission and the expected composition of the European External Actions Service, may provide an opportunity to reconsider, and perhaps even modify, the division of duties between the Commissioners, i.e. changing restructure policy areas between the Directorates-General (DG) may become relevant. Ideas that have for example been put forward regarding the possibility to bring together ECHO and Civil Protection which is set within DG Environment.<sup>64</sup>

In sum, a window of opportunity is given to closer interlink the area of civil protection with other policy areas or to undertake a more comprehensive approach to Civil Protection within the Commission.

The introduction of COSI within the Council is concluded to be the most important change within the EU institutions that may affect the area of Civil Protec-

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<sup>64</sup> Sandö, Carolina, (2007). *EU's humanitära verksamhet. Analys av samarbetsformer mellan ECHO och gemenskapsmekanismen (The Humanitarian action of the European Union). Analysis of the cooperation between ECHO and the Community Mechanism for Civil Protection)* Author translation, FOI MEMO 1950, February 2007

tion. This committee and its possible consequences for Civil Protection are analyzed in next chapter.

**Important conclusions about the institutional changes brought about by the Treaty of Lisbon**

- The changes *within* the EU institutions will not have implications for civil protection. A possible exception is the Standing Committee on Internal Security. However its role and function are far from established. The negotiations will continue.
- An important shift is identified in the balance of legislative power from the Council to the European Parliament in the area of Civil Protection.

## **6 The Standing Committee on Internal Security**

### **6.1 Introduction**

The wording of the Treaty of Lisbon about the Standing Committee on Internal Security (COSI), that will be set within the Council, is vague. The actual role and function of the Committee remains to be defined.<sup>65</sup>

In relation to the Constitutional Treaty, discussions were carried out on the future of COSI.<sup>66</sup> In the light of these discussions there appears to be at least three fundamental aspects that will need to be established before the actual role of COSI can be set, namely the area of responsibility of COSI, its composition and how the Committee shall relate to other Council structures and EU bodies. These aspects will be elaborated next from the perspective of Civil Protection.

### **6.2 Consequences for the Area of Civil Protection**

#### **Area of Responsibility**

Starting with COSI's responsibility, references made to the 'internal security' of the EU imply that the work in COSI may potentially cover a broad range of policy areas. Since 'internal security' is all-encompassing, there is a need to carry out discussions about the actual meaning of internal security and subsequently what areas that should be covered by the Committee.

Opinions have proved to differ among the Member States concerning if COSI's mandate shall be kept narrow or if it shall be broadly defined. Indeed, this will be imperative for whether or not Civil Protection will be included in the work of COSI.

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<sup>65</sup> Article 71 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>66</sup> Council, Discussion paper on the future Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261, Definitions and tasks nr. 5. Brussels, 21 February, 2005

A number of areas have been highlighted in relation to the few discussions been held so far among Member States' representatives and experts about COSI.<sup>67</sup> These are:

- the prevention and combating of crime,
- the prevention of the terrorist threat, the protection against a terrorist attack and the assistance on the event of a terrorist attack (terrorism solidarity clause),
- intelligence exchange,
- public order management,
- the prevention and combating of criminal offences such as illegal immigration and trafficking in persons,
- the provision of an integrated management system for external borders as a major factor for preventing (certain) forms of crime within the EU,
- and crisis management with cross-border effects within the EU (including the disaster solidarity clause).

Regarding EU counter terrorism, there are at present two working parties within the Council that deal with counter-terrorism: the Working Party on Terrorism (COTER) which deals with *external* aspects of the EU's work in the area, and the Terrorist Working Group (TWG) which deals with the *internal* aspects of the EU in the area. A possible task for COSI may be to provide coordination between the two working parties in order to cover all aspects of counter-terrorism in a more integrated way.<sup>68</sup>

Civil Protection is seldom mentioned in relation to COSI, which raises questions concerning if and to what degree the establishment of COSI will actually influence the area. However, if looking closer at the above mentioned areas, civil protection is involved in both counter terrorism (consequence management) and in crisis management with cross-border effects within the EU. Thus, since Civil Protection contributes to a high degree to the EU's internal security, not least through the Community Mechanism for Civil Protection, connections with COSI should be expected.

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<sup>67</sup> These possible areas are found in: Council, Discussion paper on the future Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261, Definitions and tasks nr. 5. Brussels, 21 February, 2005.

<sup>68</sup> This idea was *inter alia* forwarded during an informal meeting in COREPER in February 2008 which was supported by several Member States.

Nevertheless, there has been some hesitation among Member States as regards passing on tasks from PROCIV to COSI. PROCIV has developed important competence in the area of Civil Protection throughout the years. Today, PROCIV also handles the European Programme on Critical Infrastructure Protection and the work on strengthening chemical, biological, radiological and nuclear (CBRN) security in the EU, which constitutes one of the main questions for the EU counter-terrorism when this report is written. From this perspective it may, On the one hand, be difficult to argue in favour of integrating the work of PROCIV into COSI given the broadened mandate of the working party and the competence that it has developed over the years. On the other hand, it's a challenging task to entirely 'isolate' Civil Protection and the other areas within PROCIV from COSI.

In this context the new multiannual programme for the area of freedom, security and justice- the Stockholm Programme - could be mentioned once more.<sup>69</sup> If the Treaty of Lisbon enters into force and if a new multi-annual programme for the area of freedom, security and justice is adopted, it may be a challenge to argue against an inclusion of the area of Civil Protection in COSI.

## Tasks

The wording of the Treaty of Lisbon about the tasks of COSI is ambiguous and opinions differ regarding how it shall be defined and what exactly it shall consist of.<sup>70</sup> How the operational cooperation shall be promoted and strengthened in accordance with the wording of the Treaty of Lisbon needs to be further concretised.

In relation to the few discussion held so far about COSI, there are several potential tasks for the Committee that has been put forward.<sup>71</sup> These are:

- legislative functions,
- strategic functions and in particular elaborating an EU plan for internal security,
- solidarity clause related functions,
- operational planning functions,

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<sup>69</sup> See p 22.

<sup>70</sup> A general conclusion drawn on the basis on the interviews carried out within this report.

<sup>71</sup> These possible tasks are found in: Council, Discussion paper on the future Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261, Definitions and tasks nr. 5. Brussels, 21 February, 2005.

- evaluation functions,
- and external relations

First, it has been held that COSI's main task should be to ensure the evaluation and implementation of policy in the area covered by its responsibilities. This may, *inter alia*, include tasks such as to perform strategic planning in close cooperation with the Commission, prevention and preparedness activities with a focus on operational cooperation, the evaluation, supervision and the coordination of the work in the different working parties and committees within the Council as well as between the authorities of the Member States. Moreover it has been suggested COSI could be responsible of coordinating the EU body for judicial cooperation (Eurojust), the European Law Enforcement Organisation (Europol), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the EU Counter-Terrorism Coordinator.<sup>72</sup>

Second, in relation to the Constitutional Treaty the issue was raised whether or not there is a need for a legislative committee for internal security to coordinate and prepare all legislative aspects for the area, and moreover if COSI would be mandated with such functions. These discussions have continued in relation to the Treaty of Lisbon. It has, *inter alia*, been suggested that COSI would replace the so-called Article 36 Committee (CATS) and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) in negotiating legislative acts in relation to internal security. This, however, would not affect the area of Civil Protection.

However, at present a majority of the Member States opposes such tasks for COSI; instead it is held that the legislative role should be limited to '... ensure that legislative developments correspond to operational needs as identified by COSI'.<sup>73</sup> It is also held that the policy process will become less efficient if one more level is added to the working parties such as PROCIV, the Article 36 Committee for the area of freedom, security and justice, COREPER and the Council.<sup>74</sup>

The Committee may also be provided with an *operational* role, which, on the one hand could be understood as having a specific role in the event of a crisis. On the other hand, it could be understood as having a role of ensuring the EU's ability of

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<sup>72</sup> Memorandum from informal meeting about COSI 2008-04-09.

<sup>73</sup> Memorandum from informal meeting in COREPER about COSI 2008-04-21

<sup>74</sup> Interview, Sweden, 2008-04-14.

operational coordination in relation to a potential crisis through the provision of appropriate tools and policy – a framework- to warrant that the competent authorities are able to cooperate in areas of common interest or threat in relation to the internal security<sup>75</sup>

The latter seems more likely, since the actual operational activities on internal security most likely will remain Member States' tasks. From a short-term perspective it seems reasonable that the future Committee is not directly in charge of conducting operational activities, but rather to *ensure* that operation cooperation is promoted.<sup>76</sup>

However, from a long-term perspective, major and severe crises may bring about a more far-reaching mandate for COSI's.

It is noteworthy that in relation to the Constitutional Treaty ideas were put forward to shape COSI into the equivalent of the Political and Security Committee (PSC), but for internal security issues. The PSC's task is defined as follows:

*'PSC meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the common foreign and security policy (CFSP) including the ESDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction'.<sup>77</sup>*

If these tasks are transferred to COSI, the Committee will indeed, at least in theory, have an important role during a crisis within the EU. The political control will most certainly come under the responsibility of the affected Member State (-s) due to the sensitive character of these issues in relation to the national sovereignty. However, in relation to large-scale crises that affect several Member States and that require various capacities to manage, the COSI could be tasked to, upon request from the affected Member State (-s), support the coordination and offer strategic guidance.

If COSI is seen in relation to the solidarity clause, COSI's role may, on the one hand, mainly consist having a role in establishing the provisions as to how the solidarity clause shall be implemented in close cooperation with the Council and

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<sup>75</sup> Memorandum from informal meeting in COREPER about COSI, 2008-04-21.

<sup>76</sup> Council, Discussion paper on the future Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261, Definitions and tasks nr. 5. Brussels, 21 February, 2005.

<sup>77</sup> Council Decision of 22 January 2001 setting up the Political and Security Committee (2001/78/CFSP).

the PSC. On the other hand its role may actually consist of having a role in applying the solidarity clause as well as exercising political control and strategic nature of missions in relation to the solidarity clause.<sup>78</sup>

In this context, though, questions are raised as to how the MIC within the Community Mechanism for Civil Protection will interact with COSI and how the division of duties shall be organised between COSI and the MIC. Furthermore, questions are raised as to how the Crisis Coordination Arrangement (CCA) and COSI will coordinate. If, for example, COSI shall be the equivalent of the PSC, it will mean that it will comprise of Member States' ambassadors. As regards the CCA, it shall also assemble the EU ambassadors of the Member States. In this context there will be an unnecessary duplication of crisis management structures.

Indeed, the content of 'operational activities' for COSI leaves considerable room for interpretation.

Although COSI initially will be mainly given strategic tasks, its mandate may, from a long-term perspective, through praxis and in relation to future crises develop into also containing more evident operational tasks.

## Composition

The area of responsibility and the tasks of COSI will determine the composition of the Committee and also if it shall be capital-based or Brussels-based.

Given that COSI mainly is given a strategic role, it has been held that the Committee should be capital-based and contain one single representative from each Member State with access to appropriate support, from the capital and from Brussels, depending on the issues under discussion. The need for ensuring efficiency of the Committee's work is stressed.<sup>79</sup>

However, if COSI is assigned an operational role and if a 'standing committee', as defined in the Treaty of Lisbon, shall materialize, a main base in Brussels seems more accurate. Ideas have also been put forward to provide COSI with two representatives from the Member States – one that is capital-based and deals with strategic tasks and one Brussels-based for the operational tasks.

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<sup>78</sup> Article 222 in the Consolidated version of the Treaty on the Functioning of the European Union.

<sup>79</sup> Memorandum from informal meeting in COREPER about COSI, 2008-04-21.

Another issue of importance concerns how the work in COSI shall be led. Shall the rotating presidency chair the Committee or shall an appointed chairman lead the work?

Another question in need of answers regards what organisation will be needed to support COSI. These tasks may either be performed by the relevant working groups of the Council or through the establishment of *ad hoc* project groups. From the perspective of PROCIV this may be an important issue to address. Moreover, it needs to be discussed how the European Parliament and the national parliaments shall be kept informed of COSI's activities.

In sum, it can be concluded that the expected function of COSI is far from established; the uncertainty is widespread among the Member States. Nevertheless, the time ahead is an important opportunity for the Member States to exert influence on the shape of COSI.

### **6.3 Civil Protection and COSI – Potential Long-Term Scenarios**

The materialization of COSI will not be made clear until further negotiations about its implementation have taken place. Thus, the Member States have got a significant opportunity to influence the future shape and role of COSI.

Next an attempt will be made to illuminate the possible strengths and weaknesses of a potential inclusion of Civil Protection within COSI's area of competence. It shall, however, *be stressed* that what comes next are speculations developed by the author, and shall only be seen as providing the reader with different ideas of potential future and long-term scenarios.

If the area of Civil Protection is included within COSI's area of competence and if the Committee is provided with operational tasks in the sense of having a role when a crises strikes within the EU, following strengths and weaknesses may be the case.

First, the Member States are hereby provided with a new forum within which they may coordinate their Civil Protection assistance interventions on a strategic level, if requested for by the stricken Member State (-s). Strategic leadership shall of course continue to be the main responsibility of the state requesting the help. Nevertheless, the ability of the state to carry out strategic leadership may potentially be insufficient if it is obliged to coordinate a broad range of different capacities and resources. In this context the possibility of delegating such a task to the EU-level may be welcomed. However, providing COSI with such a role implies communication and coordination between on the one hand MIC and COSI and on the other hand the Member State requesting help and the national representative in COSI. As earlier mentioned, voices have been raised to further

strengthen the MIC.<sup>80</sup> As this is further discussed questions concerning how the role of the COSI shall be linked to that of the MIC, from a long-term perspective, in relation to interventions where Civil Protection is one component will have to may be discussed. A potential scenario is that COSI is given the overall responsibility of the strategic and operational leadership of interventions within the EU in relation to crises that require the mobilization of various different resources and capacities, Civil Protection included. Nevertheless, regarding 'pure' Civil Protection interventions, if requested for and if having been provided with an enhanced operational role, the MIC may in this context be delegated the responsibility to coordinate interventions within the EU, whereas a close coordination with the UN in interventions outside the EU indeed will continue to be the rule ahead.

However, in practice it seems unlikely that situations would occur frequently where one or many Member States would agree upon delegating both the strategic and the operational leadership to the EU-level of an intervention which includes Civil Protection capacities. In the present situation it seems more realistic that the Member States first of all continue the discussions about strengthening the MIC, whereas the discussions about COSI and its possible added-value in the area of Civil Protection lie far ahead. Indeed the scenario is dependent on to what degree the EU and its Member States actually are stricken by different major crises and further on if incentives thereby are raised to change the "routines" applied so far in relation to major crises within the EU. For example major crises frequently occurring, which demand the mobilization of a broad range of instruments, may from a long-term perspective pay way for the delegation of strategic and operational leadership to COSI and to MIC. Nonetheless, while writing this report, the EU and its Member States have not yet been subject to such a catastrophe demanding the mobilization of various instruments that the scenario suggests.

Furthermore, the role of COSI implies a certain overlap with the function of the CCA. Concerning the CCA the time factor is imperative. In relation to a crisis striking swiftly, the CCA could, however, assemble initially in order to establish a shared European apprehension of the situation, to coordinate information to the citizens and the media, and if needed, to decide upon the coordination of the national crisis management measures. When the 'critical phase' of the crisis has passed, COSI could take over the strategic leadership of the intervention, if re-

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<sup>80</sup> See *inter alia* Barnier, 2006.

quested for. It shall, however, be stressed that CCA first of all is supposed to assemble the EU-ambassadors of the Member States having been struck by the crisis, whereas COSI shall represent all Member States.

An advantage with COSI in comparison to the ad hoc-based CCA, is that COSI will exist and carry out tasks 'between crises' as well. A prerequisite of establishing shared routines as well as to developing the foundation for a fruitful co-operation in the event of a crisis seems somewhat easier within COSI than within CCA. Mutual trust and the routine of communicating are also crucial for a swift mobilization of relevant actors and for an effective crisis management. A permanently based forum *inter alia* having tasks in the managing of major crises should also be more beneficial when it comes to the training of relevant personnel. In relation to earlier CCA-exercises it has for example proved to be difficult to assemble and coordinate all relevant actors. The knowledge about CCA has also proved to be insufficient. An important explanation is of course that the CCA has not yet been activated and exists mainly in theory.

However, another explanation is that the ad hoc-based nature of the CCA does not allow the continuity in the handling of and the negotiations about the CCA that is necessary for a successful implementation of the arrangements in the event of a crisis. For example it seems somewhat faulty to discuss the CCA in relation to an exercise once a year. If the function of the CCA is incorporated into the COSI, and if the committee is provided with the task of developing the CCA and the responsibility for the training, with the support of relevant Council working-groups, the prerequisites for a more efficient crisis management at EU-level should be enhanced. COSI would hereby contribute to continuity in the handling of the questions at the same time as the committee is provided with the authority to initiate proposals in order to develop the EU's overall ability of efficient coordination in relation to crises within the EU, and also having the responsibility of assuring a successful materialization. From this perspective COSI seems more advantageous in comparison to CCA. In addition COSI would possibly be able to coordinate assistance both at an operational and a strategic level, if requested for. The CCA is solely meant for coordination at a high political level.

A possible benefit of the introduction of COSI is that a opportunity hereby is given to, within the framework of the Committee; develop an all-encompassing approach to the work on crisis management and crisis preparedness in the EU, Civil Protection included. This work has mainly evolved in different sectors especially within the Commissions where coordination has been lacking. At present there is no comprehensive and all-encompassing approach to the work on crisis management and crisis preparedness within the EU.

Joint training and lessons learned as well as other measures in order to strengthen the EU's ability of preventing, preparing for and managing a crisis may also be seen as more legitimate if such initiatives also could be taken by COSI, a com-

mittee within the Council representing the Member States, and not only by for example by the Commission.

Furthermore, the ESDP developed rapidly after the establishing of the PSC, and similarly the work on the internal security of the EU may evolve dramatically as well, as a consequence of the setting up of COSI. However, establishing the division of labour between the two committees is complicated considering the intricacy of distinguishing between the external and the internal security of the EU. From a short-term perspective different forms of communication and the changing of information may possibly be established. However, from a long-term perspective it may become problematic to establish a credible division of labour between COSI and the PSC. In order to avoid this dilemma a possible solution, and a highly tentative and far-reaching scenario, could be to fuse COSI and the PSC into a sort of a joint security council, while maintaining an internal division of labour between crises. In this way the advantages of assembling representatives of the EU's internal as well as external security may be made use of. Structures within the ESDP, such as the committee responsible for the civil dimension of the ESDP and EU Military Committee (EUMC) could of course be included. Such a fusion would circumvent the problem of defining a crisis as external and/or internal and would also render the ability of the EU to manage major crises and mobilize appropriate assistance more efficient irrespective of whether a crisis strikes outside or within the EU, or not.

Of course such a 'security council' needs to be related to COREPER. Moreover questions are raised once more concerning the representation. The PSC meet, as previously mentioned, at ambassador- level, the composition of COSI, however, remains yet to be seen as well as if it shall be capital-based or Brussels-based. The most reasonable solution would be a Brussels-based COSI as it would enhance the ability of swift and reliable actions in the event of a crisis.

An alternative scenario that has not yet been discussed so far is what it could mean for the area of Civil Protection if it is not included within the competence of COSI and its duty of enhancing the operational cooperation between the Member States. A disadvantage is of course that if needed the possibility of coordinating Civil Protection assistance interventions with other actors such as the police is diminished. In addition the area of Civil Protection is to a certain degree disconnected from the rest of the EU's work on internal security by being excluded from COSI, which should not be desirable as the area here constitutes an important element. But on the other hand, if the MIC evolves to operational centre, the COSI may be seen as an unnecessary duplication of structures.

In addition there is already an extensive cooperation in the area of Civil Protection in the EU and therefore it is difficult to predict what difference it would mean for the area if included within the competence of COSI. If the Member States seldom are victims of crises where a delegation of the strategic or operational leadership of an intervention including Civil Protection is needed, COSI

may appear as superfluous. Moreover it could be claimed that since the area of Civil Protection in practice already constitutes an important component in the internal security of the EU, there should be not be any bigger difference if the area formally is included within the competence of COSI or not. Finally, the area of Civil Protection risk becoming a secondary priority in relation to for example the cooperation in the rather extensive area of justice and criminal affairs if it will fall within the competence of COSI. Consequently, it may be an advantage if Civil Protection is not included within COSI.

# Appendix 1

## Article 196 'Civil Protection'

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

- (a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;
- (b) promote swift, effective operational cooperation within the Union between national civil-protection services;
- (c) promote consistency in international civil-protection work.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

## Appendix 2

### Article 222 ‘Solidarity Clause’

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- (a)
  - prevent the terrorist threat in the territory of the Member States;
  - protect democratic institutions and the civilian population from any terrorist attack;
  - assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;
- (b)
  - assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

## **Appendix 3**

### **Article 71 'Standing Committee on Internal Security'**

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

## Appendix 4

### The Institutional Framework

#### The European Council according to the Treaty of Lisbon

The European Council<sup>81</sup> assembles the Heads of State and Government of the Member States and the President of the Commission. These assemblies are often referred to as the 'EU Summits' and are formally held twice a year. Informal meetings are also held two to three times a year. The European Council does not constitute a part of the ordinary legislative process in the EU. The aim of the meetings in the European Council is instead to provide for political coordination regarding the further development of the EU through the adoption of political strategies, declarations and guidelines, which are summarized in the so-called 'presidency conclusions'. However, these guidelines and strategies often lead to concrete initiatives by the Commission and in turn to decisions in the Council.

The European Council is led by a president who is elected by a qualified majority of the European Council for a period of two and a half years with the possibility of extending the term of office for one additional term. There is a limit of 5 years for holding the post of President. The term of office may also be ended in accordance with the same procedure in the event of obstruction or serious misconduct.

The role of the President of the European Council is:

- to lead the work in the European Council;
- to ensure preparations and the continuity of the work in the European Council in cooperation with the President of the Commission and the Council for General Affairs;
- to strive for and facilitate concordance and consensus among the Member States within the European Council;
- to present a report to the European Parliament after each meeting in the European Council;
- to represent the EU externally within the field of the common foreign and security policy (CFSP); however, without disregarding the authority of the new

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<sup>81</sup> The section is built upon the article 13 and the article 15 in the Consolidated version of the Treaty of the European Union

post of High Representative for Common Foreign and Security Policy and Vice-President of the Commission.

## Effects of the Treaty of Lisbon

Up until the implementation of the Treaty of Lisbon, the European Council has not been defined as a formal EU institution in comparison to, *inter alia* the Commission, the European Parliament and the Council. Instead the European Council has mainly been seen as existing when the Heads of State and Government and the President of the Commission actually meet in this forum. However, the implementation of the Treaty of Lisbon means the recognition of the European Council as a formal EU institution. Moreover, the system of a six-month rotating presidency between the Member States for the European Council will be replaced by a system of a chosen president.

The reform shall be seen in the light of a rather widespread awareness among the Member States of the weaknesses inherent in the system of a rotating presidency. The main weakness is the shortness of the mandate which in turn leads to a lack of continuity in both the representation and the action of the EU. A stronger and more sustainable leadership in the European Council has been requested, which is now provided for in the Treaty of Lisbon.

The changes brought about for the European Council by the Treaty of Lisbon are not expected to have any direct consequences for the policy area of Civil Protection.

## The Commission according to the Treaty of Lisbon

The Commission<sup>82</sup> can be described as the ‘engine’ of the EU with the task of promoting the general interests of the EU and taking appropriate initiatives to that end. The Commissioners represent the EU and work without instructions from the Member States. Thus, the legitimacy of the Commission lies in its independence and objective expertise vis-à-vis the work in the EU. The Commission has mainly three areas of responsibility:

- To prepare and initiate new EU legislation.
- To monitor and supervise the implementation of EU decisions.
- To look after the Member States’ compliance with common EU regulations.

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<sup>82</sup> This section is built upon article 17 in the Consolidated version of the Treaty of the European Union

The work in the Commission is divided between 27 Commissioners, one from each Member State. Each Commissioner is responsible for different policy areas; *inter alia*, the area of freedom, justice and security, the area of external relations and the European neighbourhood policy as well as the area of development and humanitarian aid. The High Representative for Foreign Affairs and Security Policy also participates as one of the Vice-Presidents of the Commission and is responsible for the Commission's external relations.

In 2014, subsequent to the elections to the European Parliament, the number of Commissioners will be reduced to a number corresponding to two-thirds of the Member States. A 'rotation mechanism' will thus be applied to the posts in the Commission from 2014, which means that each Member State every third mandate period will be without a Commissioner. The rotation system will be based on two main principles – the Member States shall be treated equally and the composition of the Commission shall reflect the demographic and geographical range of the Member States. The European Council may by a unanimity vote change the number of Commissioners.

The work in the Commission is led and coordinated by a president who decides upon the distribution of responsibilities and tasks among the Commissioners. Moreover, the European Parliament appoints the President of the Commission on a proposal from the European Council.

The Commission is supported by an administration which is divided into different DGs having the responsibility for specific policy areas. Each Commissioner is in turn responsible for one or more DGs.

Issues related to Civil Protection come under the Commission's DG Environment. The responsibility to put forward proposals in order to develop the area of Civil Protection thus comes under the DG Environment.

Furthermore, there are committees under each DG that support and examine the Commission as regards the *implementation* of a legislative act. These committees are often referred to as the 'comitology'. On these committees sit representatives from the Member States and a representative from the Commission acts as the chairman. The committees serve as forums for mutual surveillance of the Commission and the Member States in the implementation of a legislative act.

#### Crisis Management Structures within the Commission Related to Civil Protection

The work on crisis and emergency prevention and preparedness in the EU was initially mainly brought about separately in different sectors. As crises and emergencies over the years have proved to be transnational as well as cross-sectorial, there has been an ambition in the EU to develop structures in order to meet these major crises and emergencies spanning sectors and competences. Prior to the implementation of the Treaty of Lisbon, such structures have, *inter alia*, been developed within the Commission. These structures will be described next.

### *ARGUS – a cross-cutting early warning and information system*

The Commission has over the years developed operational capacity to assist in the response to a wide range of emergencies and crises by establishing a number of so-called Rapid Alert Systems (RAS). These have mainly been developed in different policy sectors – Civil Protection, disease, prevention and control, chemical, biological, radiological and nuclear threats, etc.

In 2005, the Commission adopted a general rapid alert system called ARGUS<sup>83</sup> with a view to linking together the different alert systems in order to better respond to cross-cutting crises like terrorist attacks and pandemics. Today ARGUS interlinks eight of the Commission's rapid alert systems. These eight systems will, however, maintain their sectorial functions as well. Besides being a rapid alert system, ARGUS also constitutes a basis for effective internal communication and information-sharing, consultation and coordination between the DGs and the different services of the Commission. The system shall provide a context for efficient communication with the citizens in the EU in the event of a cross-cutting crisis or emergency. ARGUS is placed within the General Secretariat of the Commission.

### *CCC – the Commission's internal Crisis Coordination Centre*

The operational crisis management structure – Crisis Coordination Centre (CCC)<sup>84</sup> – is meant to be activated in the event of a major emergency and to bring together high-level representatives of the Commission services involved in the crisis response. The task of the CCC is to assess and to monitor the development of the situation and to evaluate as well as to decide upon appropriate options for decisions and actions.

### *MIC – Monitoring Information Centre*

The Commission runs the Community Mechanism for Civil Protection<sup>85</sup> which is a structure through which participating countries may pool their civil protection capabilities for disaster-stricken or emergency-hit countries inside or outside the

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<sup>83</sup> See *inter alia* Manual on EU Emergency and Crisis Coordination (Draft) Manual on EU Emergency and Crisis Coordination (Draft), version 04/04/2006; 09:22:37

<sup>84</sup> See *inter alia* Manual on EU Emergency and Crisis Coordination (Draft) Manual on EU Emergency and Crisis Coordination (Draft), version 04/04/2006; 09:22:37

<sup>85</sup> Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (2007/779/EC, Euratom)

EU which have requested help. The Mechanism involves the participation of all EU Member States, Norway, Iceland Liechtenstein as well as the candidate country Croatia. The MIC, within the DG Environment, is the main operational function of the Mechanism with the task to, *inter alia*, facilitate and support Member States' civil protection assistance to countries affected by a disaster and requesting assistance by matching offers of assistance put forward by participating countries to the needs of the disaster-stricken countries. The MIC is accessible 24 hours, 7 days a week. The MIC can within a few hours mobilise and dispatch small teams of experts to assess the specific needs at the scene.

Connected to the Community Mechanism for Civil Protection is a financial instrument<sup>86</sup> which enables financial support for transportation costs; materiel, however, is not included.

On the basis of the Community Mechanism for Civil Protection, the cooperation in the area has expanded and deepened since its establishment in 2001. At present there is, for example, ongoing work on developing so-called modules, which are a package of predefined capacities, including both materiel and personnel, to deal with specific disasters/emergencies. A module to deal with forest fires is one example.

Moreover, in February 2009 the Commission presented a communication on a community approach for the prevention of natural and manmade disaster within the EU. The aim is to identify different measures, which could be included in a "Community strategy" for prevention in the area of Civil Protection. Prevention is primarily a national responsibility but the Community strategy would serve as a complement to the national efforts regarding prevention. Consequently, prevention is likely to become an important aspect of the further development of the area of Civil Protection.<sup>87</sup>

## Effects of the Treaty of Lisbon

From the year 2014 the number of Commissioners will be reduced corresponding to two-thirds of the Member States. As a consequence of the exceptions granted the Czech Republic in November 2009, it's at the time for this report unsure how this wording of the Treaty of Lisbon will actually materialize in the future.

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<sup>86</sup> Council Decision of 5 March establishing a Civil Protection Financial Instrument (2007/162/EC, Euratom).

<sup>87</sup> Commission Communication 'A Community approach on the prevention of natural and man-made disasters', Brussels, 23.2.2009 COM (2009) 82 final.

Furthermore, the process through which the President of the Commission will be elected is slightly modified. The Treaty of Lisbon does not mean any bigger formal changes in the process but rather shifts the balance in favour of the European Parliament. Up until the implementation of the Treaty of Lisbon a person is nominated by the European Council for the post of President of the Commission through qualified majority voting and is approved, or dismissed, by the European Parliament. The Treaty of Lisbon instead states that the European Parliament appoints the President of the Commission on a proposal from the European Council.

A direct link between the results of the elections to the European Parliament and the choice of the candidate for President of the Commission is now provided for in the Treaty of Lisbon. It is stipulated that the Council should consider the results of these elections when proposing a candidate for the post of President of the Commission.

Finally, it shall be noted that up until the implementation of the Treaty of Lisbon, the Commission has represented the EU externally (the Commissioner for External Relations), together with the presidency and the former High Representative and Secretary General. This task will, however, be passed on as a new function of a High Representative of the Union for Foreign Affairs and Security Policy which will include the position as one of the Commission's Vice-Presidents as well as the Commissioner for External Relations.

The changes brought about to the Commission by the Treaty of Lisbon are not expected to have any direct consequences for the area of Civil Protection.

## **The Council according to the Treaty of Lisbon**

The Council<sup>88</sup> represents the Member States' Governments and assembles one minister from each Member State. Which minister will represent the Member State in the Council depends on the issues on the agenda. The Council constitutes the highest decision-making institution in the EU.

The Council has the following responsibilities:

- To adopt EU legislations.

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<sup>88</sup> This section is built upon article 16, 18 and 27 in the Consolidated version of the Treaty of the European Union and on article 71 in the Consolidated version of the Treaty on the Functioning of the European Union.

- To develop the common foreign and security policy.
- To coordinate the work of the police cooperation and the judicial cooperation in criminal matters.
- To conclude international agreements.
- To settle the EU's annual budget together with the European Parliament.

The work in the Council, except for the Foreign Affairs Council which will be commented below, is led by a presidency which rotates every six months among the Member States in accordance with a pre-defined schedule. The role of the presidency is to lead the work in the Council and its administration, the Council Secretariat, and to represent the Council in relation to other EU institutions.

The General Affairs Council deals with matters that may affect more than one of the EU's policy areas and has the task of ensuring consistency in the work of the other different constellations of the Council. In close cooperation with the new President of the European Council and the President of the Commission, the General Affairs Council co-ordinates preparations for and the follow-up of the meetings of the European Council.

The list of the other configurations of the Council subsequent to the implementation of the Treaty of Lisbon will be adopted through a decision taken by the European Council.

The Council meetings are divided into two sessions. The first session containing discussions and voting about new EU legislation will be open to the public with a view to increasing the democratic insight. The other session will be private and include discussions regarding non-legislative issues.

The Council is assisted by *the Permanent Representatives Committee (COREPER)*, which is responsible for preparing the work in the different configurations of the Council and is composed of the Member States' ambassadors to the EU and is chaired by the Member State holding the presidency.

COREPER in turn is assisted by committees and working parties that are responsible for the preparatory work within the Council. These committees comprise representatives from the Member States' governments as well as officials from the Commission. The working parties cover all the EU's areas of cooperation. COREPER may also appoint ad hoc working groups to deal with a specific matter if it is assessed that none of the permanent working groups are suited to deal with the matter.

PROCIV is a preparatory body of the Council and works under the mandate of the Justice and Home Affairs Council. PROCIV meets monthly and is comprised of delegations from the capitals of the Member States. If necessary, members can meet at short notice.

PROCIV is central for issues related to Civil Protection. PROCIV reports to the Council via COREPER. The role of PROCIV is, *inter alia*, to negotiate draft

proposals for legislation initiated by the Commission and to consider the Commission's communications and, where appropriate, give them a follow-up through draft Council conclusions or draft resolutions. Moreover, PROCIV may also put forward proposals for political documents, generally initiated by the presidency or a delegation. Finally, PROCIV may also deliver opinions to the Council's other working parties and committees in the area covered by its competence.

According to the Treaty of Lisbon, a High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) will chair the Foreign Affairs Council. The European Council will appoint the High Representative by a qualified majority with the agreement of the President of the Commission. In accordance with the same procedure the term of the High Representative may be ended by the European Council.

The task of the High Representative is:

- to conduct the Union's common foreign and security policy, including the common security and defence policy, and shall contribute through proposals to the development of the policy;
- to represent the Union in matters relating to common foreign and security policy;
- to be one of the Vice-Presidents of the Commission and to ensure consistency in the Union's external actions as well as to be responsible within the Commission as regards external relations and for coordinating other aspects of the Union's external actions;
- to conduct political dialogue with third parties on the Union's behalf and state the Union's position in international organisations and at international conferences;
- to have contacts with the European Parliament on a regular basis.

The role of the High Representative of the Union for Foreign Affairs and Security Policy will be three-fold: to represent the Council in foreign affairs and security policy, to be the Commissioner for External Relations as well as to be one of the Vice-Presidents of the Commission. The institutional reform of the foreign and security policy is made with a view to bringing about a more distinct coordinated Union in relation to third countries and international organisations.

A European External Action Service comprised of officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States shall work in close cooperation with the diplomatic services of the Member States and assist the High Representative.

No specifications so far have been made about how the EEAS will be organized – the precise composition, the size and internal set-up, etc. Instead this will be es-

tablished by the Council's decision on a proposal from the High Representative specifying this.

Moreover, the Treaty of Lisbon stipulates that COSI will be established within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. It shall facilitate coordination of the action of Member States' competent authorities. Representatives of the bodies, offices and agencies of the Union concerned can be involved in the proceedings of this committee. The European Parliament and national parliaments shall be kept informed about the proceedings. COSI is likely to have its base in the Justice and Home Affairs Council.

## **Emergency Management Structures within the Council Related to Civil Protection**

### *The EU's Crisis Coordination Arrangement – CCA*

The Hague Programme,<sup>89</sup> which was adopted in 2004, states the need to provide internal security within the EU through effective management of cross-border crises. To that end it is stated that integrated and coordinated EU crisis-management structures should be implemented at the latest by 1 July 2006.

The EU Crisis Coordination Arrangement was adopted in 2005.<sup>90</sup> The CCA is a cross-cutting and political arrangement that is supposed to be activated in the event of a major crisis or emergency, inside or outside the EU, striking several Member States at the same time. The CCA shall enable effective collective decision-making at a high political level in Brussels. The CCA shall also provide for a concordance between the Member States regarding communication and information to the media and the public in the event of a major emergency.

The main function of the CCA consists of a Crisis Steering Group that will function as a support and preparatory body to COREPER. It will have the task of building a common understanding of the situation and of developing and reporting options for the response as well as the follow-up on the implementation of decisions.

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<sup>89</sup> Hague Programme: strengthening freedom, security and justice in the European Union, 16054/04, Brussels, 13 December, 2004

<sup>90</sup> See inter alia Manual on EU Emergency and Crisis Coordination (Draft) Manual on EU Emergency and Crisis Coordination (Draft), version 04/04/2006; 09:22:37

### *The EU's Situation Centre – SitCen*

Within the Council the EU Joint Situation Centre (SitCen) is found, which monitors and assesses events and situations around the world on a 24-hour basis with a focus on potential crisis regions and different threats. It comprises mainly national experts from the Member States. SitCen is linked to the Member States' civilian and military intelligence services as well as their national security services. SitCen was mainly established to support the ESDP but has gained importance for the Union's internal security as well as by having been given the responsibility to manage the alarm- and early-warning of the CCA.

### **Effects of the Treaty of Lisbon**

The High Representative for Foreign Affairs and Security Policy will represent the Union externally. The new 'position' is three-fold: to represent the Council in foreign affairs and security policy, to be the Commissioner for External Relations as well as to be one of the Vice-Presidents of the Commission.

The General Affairs Council and the Foreign Affairs Council will be two separate configurations of the Council. The High Representative will be chairing the meeting in the latter.

Moreover, the Council meetings will be divided into two sessions. The first session, where EU legislation is negotiated, will be open to the public with a view to increasing the democratic insight. The second session where non-legislative issues are discussed will be private.

Finally, COREPER will, besides the Political and Security Committee, be assisted by a new COSI.

The EEAS comprising officials from the Council, Commission and national diplomatic services will assist the HR/VP in close cooperation with the diplomatic services of the Member States.

The changes brought about in the Council are not expected to have direct effects on the area of civil protection. However, depending on the shape and function of the EEAS, there may be some implications for civil protection, which will be further commented on below.

## **European Parliament according to the Treaty of Lisbon**

The European Parliament<sup>91</sup> is the only EU institution elected directly by the people in the Member States and may be seen as the main representative of the EU citizens. The European Parliament is elected every fifth year. The parliamentarians are in turn divided into seven political groups. The preparatory work takes place in parliamentary committees which are responsible for different policy areas. There is, for example, one committee for environment where civil protection is included as well as for the area of foreign affairs.

Important tasks of the European Parliament are:

- to adopt new EU regulations together with the Council;
- to approve the Commission and monitor its working procedures;
- to scrutinize the executive power;
- to approve the EU budget together with the Council.

The co-decision procedure is the ordinary legislative procedure for the adoption of legislative acts in the EU. Thus, the European Parliament shall jointly with the Council exercise legislative (with the exception of the common foreign and security policy) and budgetary functions.

Moreover, the European Parliament elects the President of the Commission on a proposal from the European Council taking into account the elections to the European Parliament. The election will be preceded by necessary consultations between the European Parliament and the Council. Furthermore, the European Parliament has the authority to approve the composition of the Commission as well as the right of inquiry and censure of the Commission.

There is an overall limit regarding the composition of the European Parliament, namely a maximum of 750 seats plus the Chairman, with a maximum of 96 and a minimum of 6 representatives per Member State.

## **Effects of the Treaty of Lisbon**

The European Parliament is given an increased competence through the introduction of the new ordinary legislative procedure in areas where the Council earlier had the exclusive decision-making power, including, for example, the area of

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<sup>91</sup> This section is built upon article 14 and 17 in the Consolidated version of the Treaty of the European Union.

freedom, security and justice where, inter alia, the judicial cooperation in criminal matters, the police cooperation and also Civil Protection are found.

The European Parliament now elects the President of the Commission. Previously, the European Parliament approved the appointment of the President of the Commission. Moreover, the elections to the European Parliament shall be considered when appointing the President.

The introduction of the new ordinary legislative procedure and the European Parliament having equal legislative powers with the Council may, from a long-term perspective, have effects on the area of Civil Protection in chapter 4. Concerning the other modifications of the European Parliament, no direct effects are expected for the area of Civil Protection.

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